

# **Federal Election Commission**

## **Annual Report 1978**



Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

## **Commissioners**

Joan D. Aikens, Chairman  
Robert O. Tiernan, Vice Chairman  
Thomas E. Harris  
John W. McGarry\*  
William L. Springer  
Vernon W. Thomson

## **Ex Officio Commissioners**

Edmund L. Henshaw, Clerk of the House  
J. S. Kimmitt, Secretary of the Senate

## **Statutory Officers**

Orlando B. Potter, Staff Director  
William C. Oldaker, General Counsel

\* Commissioner Neil O. Staebler continued to serve actively on the Commission until the "recess appointment" of Commissioner John W. McGarry on October 25, 1978.

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## FEDERAL ELECTION COMMISSION

1325 K STREET N.W.  
WASHINGTON, D.C. 20463

To the President of the United States:  
To the Congress of the United States:

We submit for your consideration the fourth annual report of the Federal Election Commission, as required by the Federal Election Campaign Act of 1971, as amended. This Annual Report 1978 describes the activities performed by the Federal Election Commission in carrying out its duties under the Act and lists the Commission's recommendations for legislative action. We hope you will find this a useful summary of the Commission's efforts to implement the Federal Election Campaign Act.

Respectfully,

*Joan D. Aikens*

JOAN D. AIKENS  
Chairman

# Table of Contents

	Page
<b>Overview</b>	<b>1</b>
<b>Chapters</b>	
1. Facilitating Disclosure	3
2. Understanding the Act and the FEC	11
3. Monitoring the Act	17
4. Enforcing the Act	21
5. Planning for the 1980 Presidential Cycle	25
6. Clearinghouse for Election Administration	29
7. The Commission's Organization and Management	31
8. Legislative Recommendations	37
<b>Appendices</b>	
1. Biographical Data on Commissioners and Statutory Officers	49
2. FEC Organization Chart	53
3. Chronology of Events, 1978	55
4. 1978 Advisory Opinion Requests	57
5. FEC Advisory Opinions: Summaries	59
6. Summary of Disclosure Files	89
7. Computer Indices Available	91
8. FEC Publications and Clearinghouse Studies	93
9. FEC Library: Summary of Collection	97
10. FEC <i>Federal Register</i> Notices, 1978	99
11. Status of Audits	101
<b>Charts and Graphs Within Text</b>	
Contributions Made by Nonparty Political Committees to Congressional Candidates	4
How the FEC Utilizes Campaign Finance Reports	7
Enforcement Statistics	21
Budget Allocation	33
Annual Budget Appropriation	34
Legislative Recommendations for Simplifying Reporting Procedures	38

The 1978 election period afforded the Federal Election Commission its first opportunity to monitor the financing of Federal election campaigns on a comprehensive basis.

During the 1976 election period, Federal candidates and committees were required to comply with a law only six months old.<sup>1</sup> Programs and procedures to administer the Federal Election Campaign Act in 1976 were necessarily developed by the Commission under considerable time pressure. By the 1978 election period, however, the Commission had reevaluated and overhauled a number of these procedures and programs.

Understandably, numerous problems and questions concerning compliance with the Act were raised by Federal candidates and committees operating under the new election law in 1976. By the 1978 election period, however, the Commission had prescribed a complete set of Regulations implementing the Act. The Commission also issued more than 100 advisory opinions to Federal officeholders, candidates and committees, which answered questions on how the Act or Regulations should be applied to specific factual situations.<sup>2</sup>

Informational outreach programs were also augmented to facilitate voluntary compliance with the Act. During 1978, Commission representatives addressed a number of public gatherings and sponsored eight seminars. The Commission initiated an informal telephone contact system to help candidates and committees register and meet reporting obligations of the Act.

Development of the Commission's *Reports on Financial Activity* disclosure series in 1978 represented a refinement in public disclosure of

campaign finance activity. For the first time, the Commission made available to the public comparative statistical studies on the campaign finance activities of Federal candidates and committees **before** election day. In addition, an unprecedented volume of campaign finance reports were made accessible in 1978, and a record number of requests for copies of such reports were processed.

Establishment of a separate Reports Analysis Division in 1978 facilitated timely, accurate disclosure of the information contained in these reports. In addition, changes in the nonfilers procedures and more coordinated efforts with State filing officials enabled the Commission to monitor the Act's registration and reporting requirements on a more systematic, thorough basis.

Improved internal procedures to monitor compliance with the Act were accompanied by the Commission's expeditious handling of compliance matters during 1978. In the final weeks of the 1978 election, for example, more enforcement cases were received and closed by the Commission than are normally processed in several months. The timely handling of these compliance cases prevented the Commission from becoming unnecessarily involved in numerous Federal election campaigns across the country.

The Commission also began laying the administrative groundwork for the 1980 Presidential public financing program. It undertook a major reassessment of the 1976 public funding program. Based on this evaluation, the Commission began to formulate a comprehensive plan to administer the Presidential Election Campaign Fund in 1980.

This year's Annual Report describes the procedures and programs the Commission developed for a smooth implementation of the Federal Election Campaign Act during 1978, and the planning processes currently underway to administer the 1980 Presidential election cycle.

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<sup>1</sup>The *Buckley v. Valeo* Supreme Court decision handed down on January 31, 1976, suspended the Commission's rulemaking authority. The Commission was reconstituted with full rulemaking powers on May 11, 1976, when the new election law, the Federal Election Campaign Act, as amended, went into effect. A full set of Regulations implementing Titles 2 and 26 of the Act were prescribed on April 13, 1977.

<sup>2</sup>See 2 U.S.C. §437f.

# Chapter 1

## Facilitating Disclosure

3

The Act mandates that the Commission make available to the public within 48 hours the campaign finance reports filed by candidates for Federal office (Federal candidates) and the political committees which support them.<sup>3</sup> During 1978, the Commission processed more than 52,800 campaign finance reports consisting of over 1.5 million pages filed by candidates and committees. Processing and disseminating the information contained in these reports entailed the coordinated efforts of the Commission's Public Disclosure, Reports Analysis and Data Systems Development Divisions and the Press Office. Enhanced computer capabilities enabled the Commission to disclose campaign finance information in a more timely fashion and to provide a more sophisticated statistical context in which to analyze and understand it.

Facilitating disclosure involves several basic operations: coding and entry of information from reports into the FEC's computer system; development of computer programs for retrieving the data; and dissemination of retrieved data to the public. The following paragraphs and the flow chart on pages 6-7 describe each of these operations as performed in 1978.

### Processing Reports

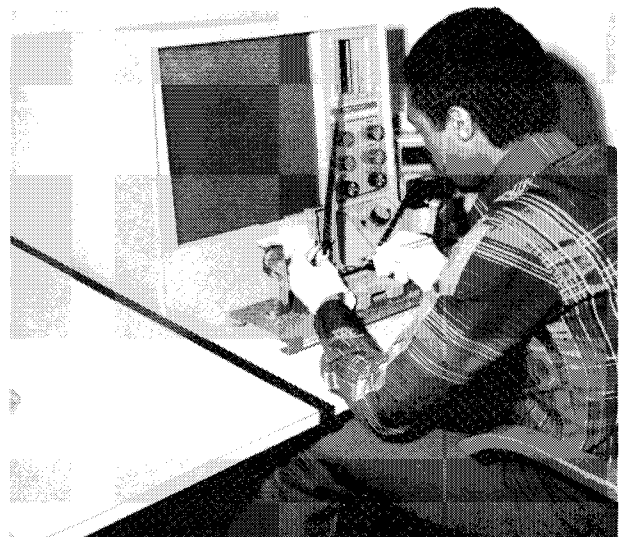
In 1976, the Commission initiated its computer-based information system to index and retrieve campaign finance data. In 1978, creation of the Reports Analysis Division improved and expanded this system. (See Chapter 7, page 32 for a description of the division's organization.) Teams of reports analysts, each specializing in the review of reports filed by one type of filer (e.g., Senate candidates, party committees or nonparty committees) code the data from reports and enter it into the computer. This process occurs in two phases: in the first phase (Pass I) summary information including microfilm location, gross receipts and gross expendi-

tures is entered into the computer within 48 hours after the report is received. During the second phase (Pass II and III), analysts enter itemized information into the computer. This information, usually entered into the computer within 60 days, facilitates more comprehensive data retrieval and serves internal monitoring functions. (See Chapter 3, pages 17-19.)

The types of campaign finance data coded and entered into the system were expanded during 1978 to include: debts, cash-on-hand, loans and loan repayments, and more detailed information on contributions exceeding \$100. Data entries totaled approximately 399,000.

The accuracy of data entry was improved as well. Computer programs were developed to identify errors or omissions occurring in reports. By using the output from these programs, reports analysts could more easily identify data entry mistakes and reporting errors.

FEC staff prepares microfilm copy of campaign finance report filed with the Commission.



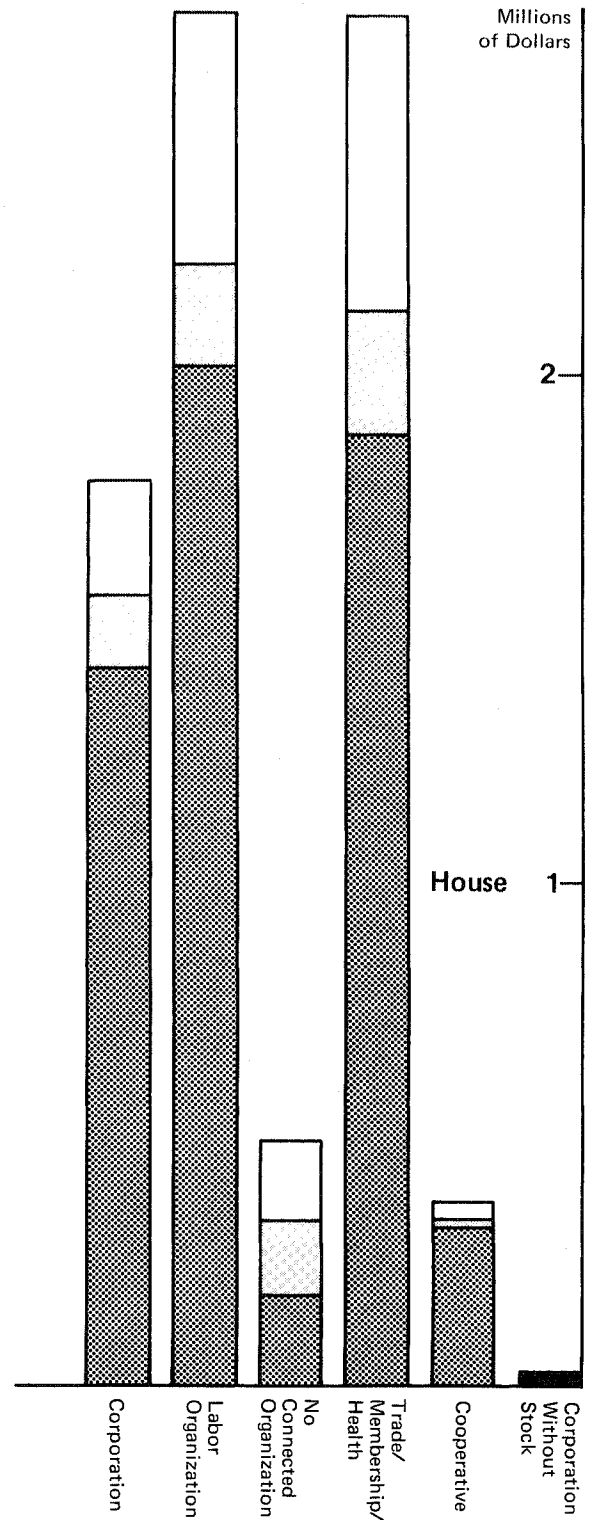
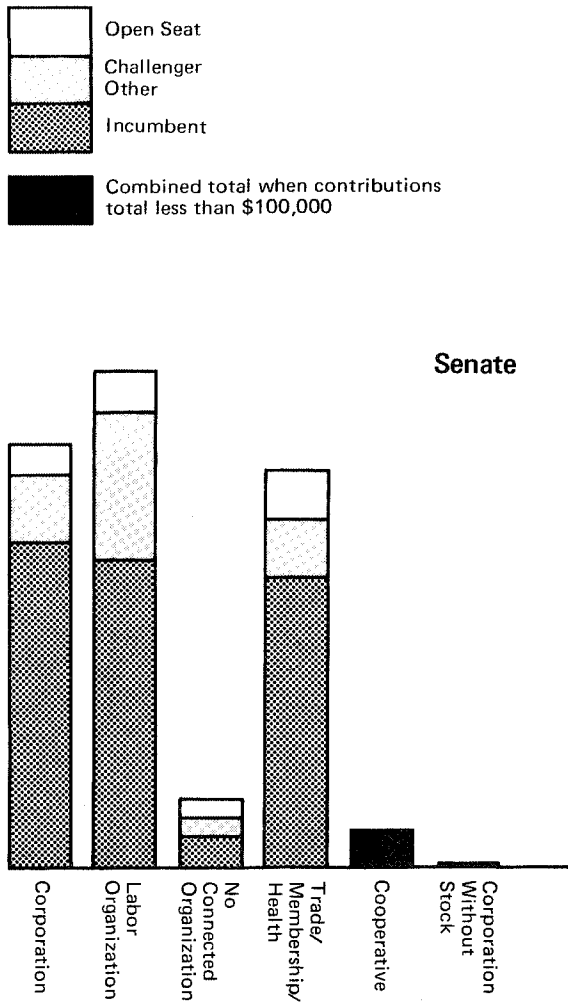
<sup>3</sup> See 2 U.S.C. §438(a)(4).

## Contributions

made by Nonparty Political Committees to Congressional Candidates

Graph shows contributions made between January 1, 1977, and July 11, 1978. With the exception of nonparty political committees with no connected organization, the political committees represented in this graph are separate segregated funds established under Section 441b of the Act.

**Source:** Federal Election Commission, *FEC Reports on Financial Activity 1977-1978, Interim Report No. 2: Party and Nonparty Political Committees*, September 1978, p. 153.



After data is entered into the computer, the Data Systems Development Division cross references the information for retrieval purposes. Data entry, cross referencing and retrieval occur every day. This process results in daily updates of information stored in the computer. If, for example, candidate Jones or his principal campaign committee filed a report on Wednesday, the summary (Pass I) information from the report would appear in the computer indices on Thursday. Subsequently, itemized information on contributions and expenditures made on behalf of Jones would be coded, entered and cross referenced to augment the summary information.

## Retrieving and Disseminating Data

Forty computer terminals and a high-speed printer located at the Commission permit staff and the public to retrieve information from the computer system. During 1978, Commission staff used approximately 16,000 printouts of computer indices. Additionally, 25,000 printouts were generated in response to requests from the public and the press: 12,000 were produced within minutes of the request and 13,000 were provided within 24-48 hours.

During 1978, the Data Systems Development Division developed approximately 500 new computer programs, permitting more refined retrieval of campaign finance data. Some of these new computer programs resulted in the *Reports on Financial Activity* series in 1978, a comprehensive study of campaign finance activity by candidates, party committees and nonparty committees. Not only did the new statistical series categorize information in more complex ways, but it was also timely. In previous years, statistical studies were not released until after the election cycle was completed. In 1978, the first three volumes of the *Reports on Financial Activity* series were released before the general election.

Based on cumulative data from campaign finance reports filed since January 1, 1977, these volumes were published as interim reports. *Interim Report No. 1* (April 1978) and *Interim Report No. 2* (September 1978) covered the financial activities of party and nonparty committees. *Interim Report No. 3* (October 1978) focused on U.S. Senate and House campaigns. In April 1979, the Commission plans to release *Interim Report No. 4* on party and nonparty committees and *Interim Report No. 5* on U.S. Senate and House campaigns. In the fall of 1979, a comprehensive report on the entire 1977-78 election cycle will be released.

The *Reports on Financial Activity* series provided a context for interpreting the existing indices of campaign finance data. The studies permitted comparisons between the campaign finance activity of a particular committee and the activities characteristic of other similar committees.

A typical study included in *Interim Report No. 2* appears in the chart on page 4. The graph summarizes campaign finance activity reported by nonparty committees from January 1, 1977, through August 4, 1978. It breaks down political contributions made by nonparty political committees to U.S. Senate and House candidates by candidate status (whether incumbent, challenger or in an open seat race). The six categories of nonparty political committees whose contribution patterns are represented include committees with no connected organization as well as the separate segregated funds of: corporations, labor organizations, trade/membership/health organizations, cooperative organizations and corporations without stock.

The Commission disseminates this campaign finance information to the public through its Press and Public Records Offices.

(Continued on page 8)



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**Candidates and Political Committees File Their Campaign Finance Reports and Statements.**

Candidates for the House of Representatives and committees which exclusively support candidates for the House file their reports with the Clerk of the House of Representatives. The Clerk's office forwards copies to the FEC.

Candidates for the Senate and committees which exclusively support candidates for the Senate file their reports with the Secretary of the Senate. The Secretary's office forwards copies to the FEC.

All other reporting entities, including candidates for the Presidency and committees which support them, and party and non-party committees file their reports directly with the Federal Election Commission.

All candidates and committees also file a copy of their reports with the Secretary of State or equivalent State elections official of the State where campaign activity occurs or where the committee is based.

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**FEC Receives All Reports and Begins to Process Them.**

Within 48 hours after their receipt, the FEC makes copies of the reports (and indexes to the reports) available to the public in the Public Records Office.

The FEC sends copies of reports to the Commission's Reports Analysis Division.

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**FEC Indexes and Cross References Information Contained In Reports.**

The Reports Analysis Division codes information from reports and enters it into the FEC's computer. Data entry occurs in two stages:

Within 48 hours after receiving the report, summary data from the reports is coded and entered into the computer.

Subsequently, itemized data from the reports is coded and entered into the computer.

Each day, the Data Systems Development Division updates the computer data base by integrating newly entered information into existing categories of data.

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**FEC Makes Campaign Finance Information Available to Public.**

The public may review and copy microfilm and paper copies of reports in the FEC's Public Records Office.

Computer terminals in the Press and Public Records Offices permit reporters and the general public, respectively, to obtain computerized indexes to campaign finance information.

Utilizing certain indexes, the Data Systems Development Division prepares comprehensive studies of campaign finance activity, available in the FEC Press and Public Records Offices.

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**FEC Reviews Reports.**

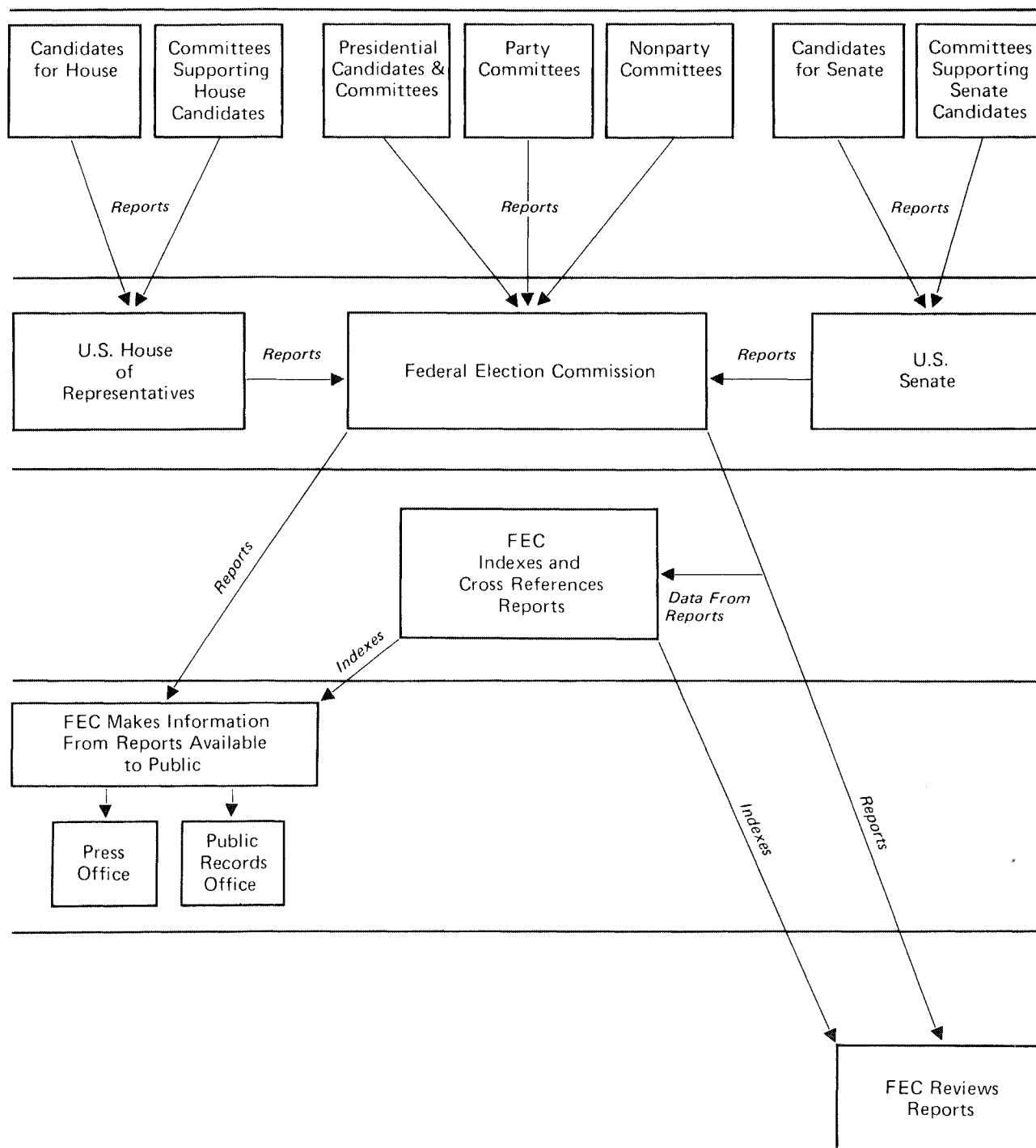
After coding and entering data, the Reports Analysis Division reviews the reports for accuracy and completeness.

If a report is inaccurate or incomplete, the Commission may send the filer a Request for Additional Information (RFAI). An adequate response to the RFAI is processed as any other report. No response may be handled as an enforcement case.

Computerized indexes to campaign finance information are made available to the Reports Analysis staff to assist their review of reports.

Computerized indexes available to other FEC staff through computer terminals located throughout the Commission, facilitate the Commission's supervisory functions.

## How the FEC Utilizes Campaign Finance Reports



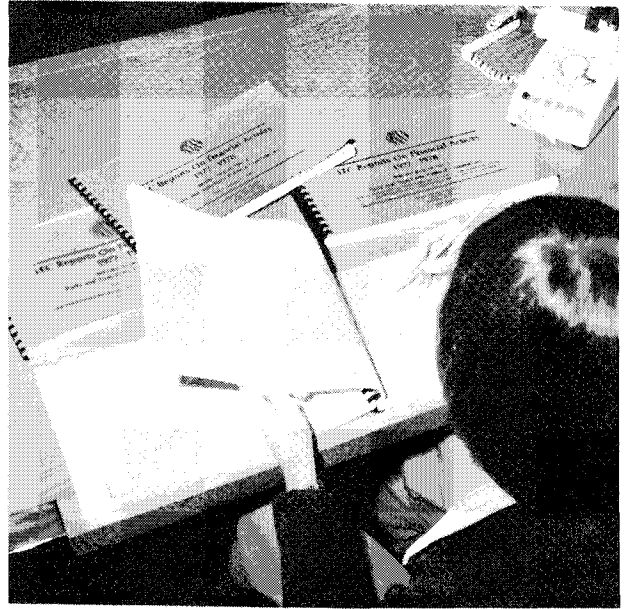
### The Press Office

In responding to information requests from the media, the Press Office uses daily updates of the computer indices to provide reporters with such information as: listings of candidates who received contributions from a particular non-party committee; identification of a political action committee's sponsor; and information on whether a particular candidate or committee registered or filed a recent report with the Commission. Periodically, the Press Office also disseminates press releases summarizing statistical studies such as those contained in the *Reports on Financial Activity* series.

### The Public Records Office

Members of the public can also retrieve data from the FEC's two computer terminals located in the Public Records Office. During the 1978 election period, as in the past, computer printouts could be obtained listing the total gross receipts and expenditures of political committees (Index C); candidates supported by committees, including total aggregate contributions to, or expenditures on behalf of, each candidate by committees (Index D); and other information on candidates and their supporting committees, including listings of all committees forwarding contributions to the candidates and making expenditures on their behalf (Index E). In addition, printouts of two new indices were made available to the public: the G Index and the 48-Hour Telegram Index. Portions of the G Index provided listings of individuals making contributions of \$500 or more to Federal candidates and committees.<sup>4</sup> (For a full description of G Index capabilities, see Appendix 7. The 48-Hour Telegram Index listed contributions of \$1,000 or more received by candidates and their authorized committees within 10 days of elections.

<sup>4</sup> Pursuant to restrictions in 2 U.S.C. §438(a)(4), the G Index with its names of contributors and addresses is available for public inspection exclusively at the Commission and may not be mailed out or copied.



FEC's *Reports on Financial Activity* summarize campaign finance transactions of candidates and political committees active in the 1977-78 election cycle.

Providing the public with updated indices is but one way in which the Public Records Office, a branch of the Public Disclosure Division, fulfills its disclosure function. As a "storefront" operation located on the street floor of the Federal Election Commission, the Public Records Office also maintains copies of all reports and statements filed since 1972. Microfilm copies of all reports are kept permanently on file, including approximately 1.5 million pages of reports filed in 1978. As space permits, Public Records also maintains paper copies of current reports for public inspection.

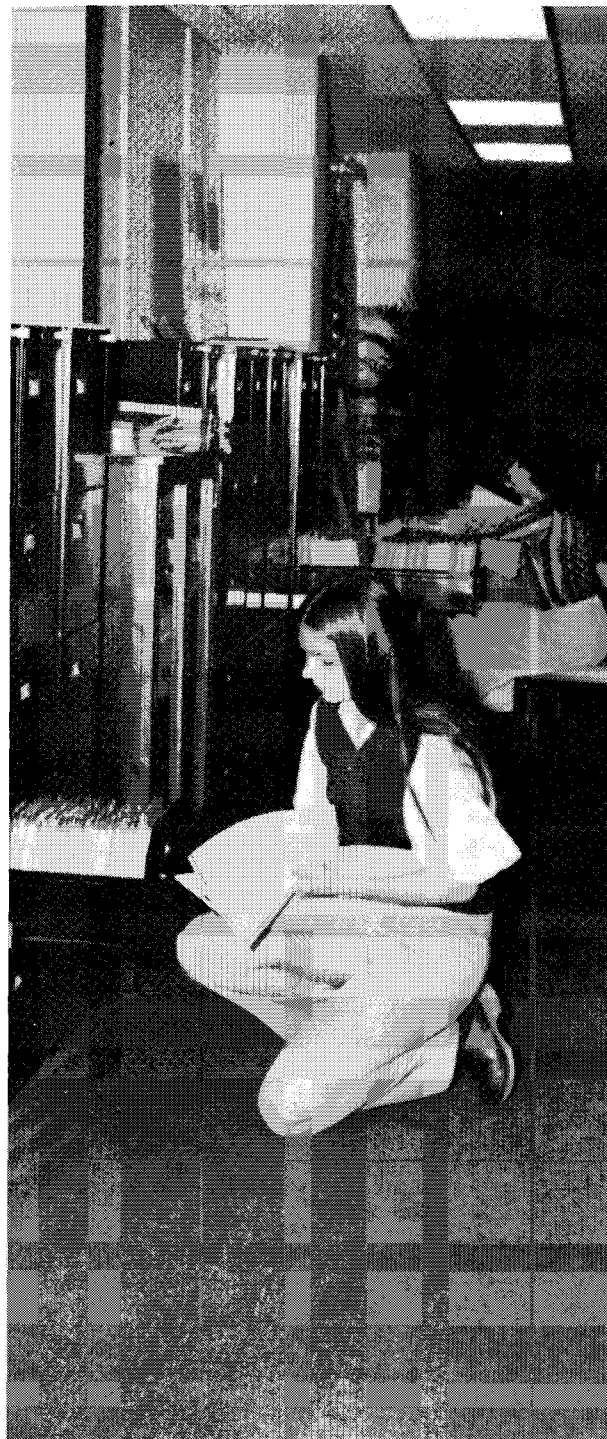
The Office is open for public use weekdays from 9 a.m. to 5 p.m. and evenings and weekends during the preelection period. A library facility with ample work space and a knowledgeable staff facilitates information retrieval. The Public Records Office served 7,100 visitors using these information resources during 1978.

There is no charge for reviewing the files in the Public Records Office and any document can be copied at a cost of 10 cents per page.<sup>5</sup> The Public Records Office copied a record number (over 276,485 pages) of statements and reports on self-service copy machines during 1978 for the general public. The Office also processed written requests (1,675) and telephone requests (3,558) for copies of specific candidate and committee reports. Altogether, staff processed more than 12,350 requests for documents in 1978.

To facilitate public access to a variety of FEC documents, the Public Records Office expanded its microfilm program in 1978 to include closed compliance cases and data on contributors to Federal candidates and committees. Other documents and informational aids available in paper copies include:

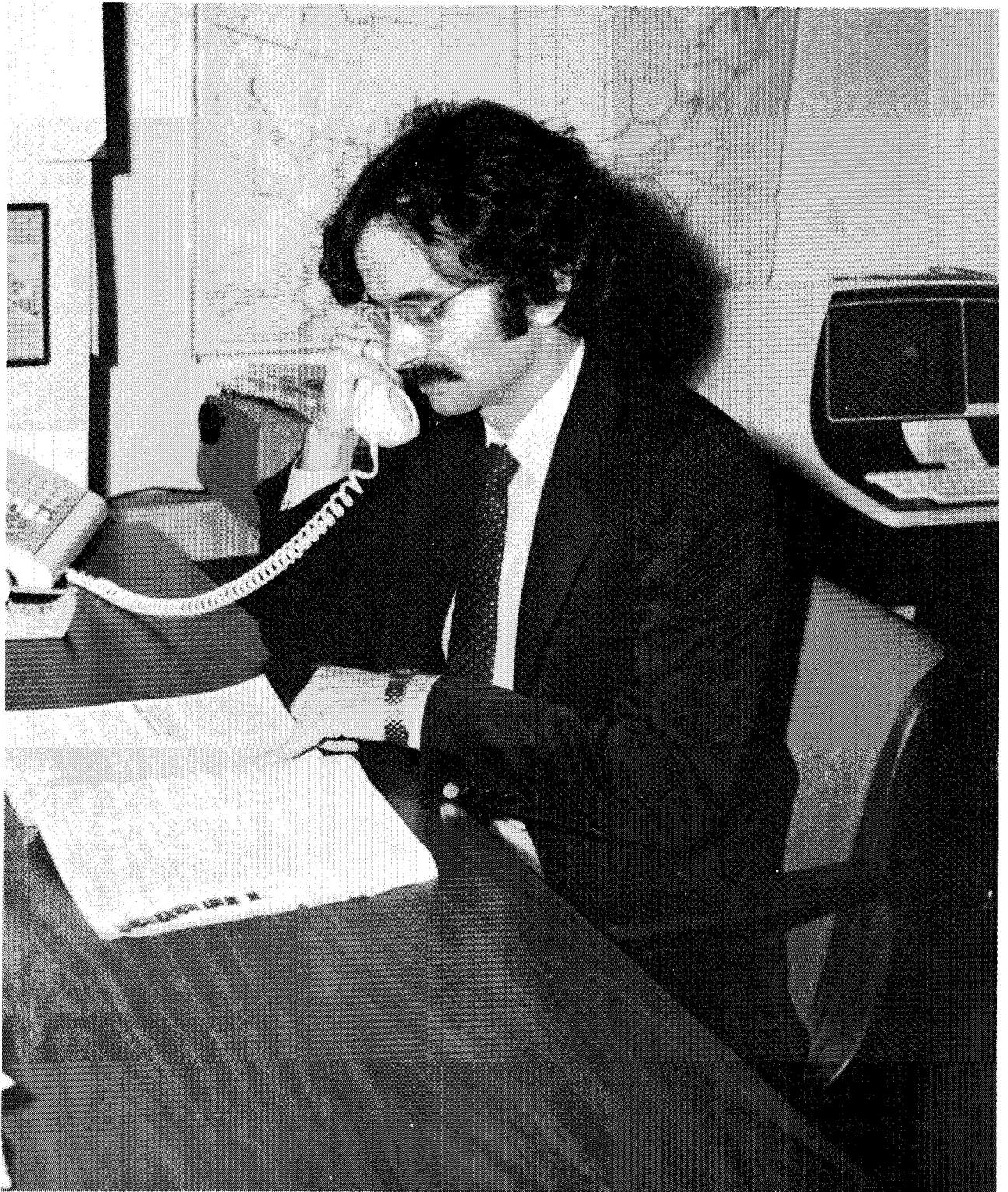
- Commission documents (press releases, memoranda, agendas and minutes of Commission meetings);
- FEC Opinions (Index, Advisory Opinion Requests, Advisory Opinions, comments on Advisory Opinions);
- Enforcement cases (Index, closed compliance actions);
- Audits (GAO 1972-74, FEC);
- Court cases (*Buckley v. Valeo*, etc.);
- FEC publications (*Campaign Guides*, *Record*, *Annual Report*);
- *FEC Reports on Financial Activity*;
- Presidential matching funds certifications;
- Hearing transcripts (upon request);
- General information (newspaper articles, studies on campaign finance by other organizations, informational handouts).

In the FEC's Public Records Office the public may locate paper copies of campaign finance reports filed by candidates for Congress.



<sup>5</sup> Anyone using such documents is reminded, however, of the Act's requirement that any information copied from such reports and statements "shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose." 2 U.S.C. §438(a)(4).

FEC's toll-free line permits people all over the country to get information from FEC's professional staff.



## Chapter 2 Understanding the Act and the FEC

11

The Federal Election Commission has been the major source of information concerning the Federal Election Campaign Act and Regulations since the Commission first opened its doors in April 1975. Numerous outreach programs, including toll-free telephone lines, free publications, informational mailings, and the conduct of Commission meetings in open session attest to the FEC's commitment to providing information on the Act, the Regulations and Commission activities.

Recognizing the direct correlation between a thorough understanding of the Act and Regulations and voluntary compliance, the Commission has always placed a high priority on providing information and assistance to candidates for Federal office and to the political committees which support them.

To meet this objective, the Commission issues advisory opinions to Federal officeholders, political committees and candidates who raise questions about the application of the Act or FEC Regulations to specific factual situations. It provides candidates and committees with the forms, pamphlets and personal assistance they need to report correctly and otherwise comply with the Act. The Commission also uses such monitoring functions as field audits and review of campaign finance reports as educational tools for candidates and committees.

Information programs designed to promote both voluntary compliance with the Act and Regulations and a wider understanding of the FEC's role in administering the Act are detailed below.

### Advisory Opinions

#### Process

Advisory Opinions (AO's) issued by the Commission assist Federal officeholders, candidates and committees with voluntary compliance. An opinion explains how the Commission would apply a general rule of law, as stated in the Act or Regulations, to a specific factual situa-

tion described by the requester. Any qualified person requesting an Advisory Opinion who in good faith acts in accordance with the opinion will not be subject to any sanctions under the Act. The opinion may also be relied on by any other persons involved in a specific transaction which is "... indistinguishable in all its materials aspects..."<sup>6</sup> from the activity or transaction discussed in the AO.

All advisory opinion requests (AOR's) are made public in the Office of Public Records at the Commission. Interested members of the public may make comments on any AOR within 10 days of the date it is made public. A line description of the AOR and other pertinent information for obtaining copies is published on a monthly basis in the Commission's newsletter, the *Record*.

The Office of General Counsel considers each request for an AO. Occasionally, it seeks additional information from the requester to clarify the facts. The Office then presents a draft AO to the Commission during a regularly scheduled open meeting. All AO's must be approved by at least four Commissioners. Once issued, AO's are made public in the Office of Public Records and summarized in the *Record*. Responding to the many requests received during the 1978 election period, 105 AO's were issued by the Commission in 1978.

#### Issues Addressed by Advisory Opinions

Must a subordinate party committee register if it contributes less than \$1,000 in a calendar year to candidates for Federal office? Under what circumstances would a Federal candidate's activities be considered campaign-related or noncampaign-related? A number of such election-year issues were addressed in Advisory Opinions issued by the Commission during 1978. Three of the major issues covered by 1978 Advisory Opinions are discussed in detail below. (All AO's issued in 1978 are summarized in Appendix 5 of this Report.)

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<sup>6</sup>See 2 U.S.C. §437f(b)(2).

*State Party Activity:* Federal election activity by State and local party committees was clarified in a series of Advisory Opinions. In AO 1978-9, the Commission said that the Republican county committees in Iowa would appear to qualify as independent political committees not affiliated with the State central committee because the facts indicated they were not established, financed, maintained or controlled by the State central committee. By contrast, the Commission concluded that the party's auxiliary bodies would be considered affiliated to the State central committee because the State committee's bylaws provided for their establishment. Consequently, county committees could have separate contributions limits, both for contributions they received and contributions they made to Federal candidates, whereas auxiliary committees would share the State committee's contribution limitations.

In the case of coordinated party expenditures (§441a(d)), the Commission said that both county and auxiliary units would be required to share the overall State limits.

Advisory Opinion 1978-9 also determined that each Iowa Republican county committee or auxiliary body which had not yet qualified as a political committee under the Act<sup>7</sup> could make contributions up to \$1,000 in a calendar year to candidates for Federal office without incurring any obligation to register or report. Until an auxiliary party unit became a political committee, its contributions generally would not count against the State committee's limitations and would not have to be reported.

In several other opinions, the Commission addressed the issue of allocating party expenses between Federal and non-Federal activities. Commission Regulations require that "party committees and other political committees which have established Federal campaign committees pursuant to §102.6 [of FEC Regulations] shall allocate administrative expenses on a

reasonable basis between their Federal and non-Federal accounts . . . ." These administrative expenses include rent, personnel, overhead and other day-to-day costs of the committee. Expenses for general get-out-the-vote or registration drives must also be allocated between Federal and non-Federal accounts.

In three opinions issued to party committees in Kansas, Michigan and Nevada, the Commission clarified this provision of the Regulations. AO's 1978-28 and 1978-50, for example, held that even though a get-out-the-vote drive was not held directly on behalf of a clearly identified candidate for Federal office, such activity in an election year where Federal candidates appeared on the State ballot would, at least in part, be "for the additional purpose of influencing the election of persons to Federal office." Consequently, get-out-the-vote or registration drives would have to be allocated between Federal and non-Federal accounts.

In the three opinions, the Commission held that the portion of the expenses allocable to the Federal committee need not be attributed to the limits of any specific candidate for Federal office unless they were made on behalf of, and could be attributed to, a clearly identified candidate.

The Commission also concluded in AO 1978-10 (Part A) that the portion of registration and get-out-the-vote costs allocable to non-Federal elections could be paid from funds raised under applicable State laws, including funds not permissible under Federal law. Depending on the State, therefore, expenses allocable to non-Federal elections could be defrayed with corporate, labor and cash funds, or with donations exceeding the contribution limits established by the Act. Party committees were required, however, to use only funds lawfully contributed under the Act to defray that portion of expenses allocable to Federal elections.

This conclusion modified two previous Commission responses to Advisory Opinion Requests

<sup>7</sup>See 2 U.S.C. §431(d).



(1976-72 and 1976-83) which held that party committees could only use funds lawfully contributed under the Act to defray costs of get-out-the-vote drives held in a Federal election year.

*Campaign vs. Noncampaign Activity:* In several advisory opinions issued in 1978, the Commission distinguished between activity which was campaign-related (and, thus, subject to the limitations of the Act) and activity not related to Federal elections. The Commission considered several kinds of activities, including the sponsorship of intern programs by Members of Congress and participation in public policy groups or charitable organizations.

In two opinions, AO 1977-27 and 1978-44, the Commission determined that an intern program proposed by a Member of Congress was not campaign-related. Moreover, since the funds raised in connection with the program were placed in a separate account managed by an outside organization and the Member had no control over the funds, the Commission concluded that the funds donated for the programs were not given to support the Member's activities as a Federal officeholder. They were, therefore, not subject to the office account reporting requirements in Part 113 of the Commission's Regulations.

The Commission also issued several opinions clarifying when a candidate's appearance before the public was not considered campaign-related. In AO 1977-54 and AO 1978-15 the Commission ruled that a candidate's participation in publicizing and raising funds for issue-oriented and charitable drives, whose major purpose was **not** the nomination or election of that candidate to Federal office, would not be considered campaign-related provided:

- The activities did not involve the solicitation, making or acceptance of contributions to the candidate's campaign; and
- The activities did not involve any communication which expressly advocated the election of that candidate to Federal office, or the defeat of any opponent.

*Excess Campaign Funds:* Several opinions issued by the Commission in 1978 responded to questions raised by Congressional candidates concerning the use of excess campaign funds. In these opinions, the Commission explained that, under the Act, candidates may use excess campaign funds in any manner consistent with Federal and State laws, including:

- Payment of staff and incidental expenses in the performance of duties "imposed by virtue of having been a Member of Congress" (AO 1978-43);
- Production of film, to be shown as a television public service announcement, depicting facilities and services which a Congressman makes available to his constituents (AO 1978-76);
- Payment of expenses of a buffet luncheon given in honor of a Congressman (AO 1978-85); and
- Transfer of funds to a research organization for the establishment of a fellowship program (AO 1978-87).

Additionally, in AO 1978-94, the Commission concluded that excess funds of a deceased candidate may be transferred to a Federal or State campaign of the late Congressman's son, to a political organization, to the surviving members of the late Congressman's family and to campaign committee staff. Transfers to a Federal campaign would be subject to contribution limits.

In all these opinions, the Commission stated that it could not comment on the applicability of Senate and House Rules or Internal Revenue Service Regulations since they were not within the Commission's jurisdiction.

## The FEC's Information Division

The Commission's Information Division defines as its primary mission the supplying of information and assistance to Federal candidates and political committees. Secondarily, the Division tries to help the general public understand



Commission functions and activities. Its programs are administered by three branches: the Office of Public Communications, the Press Office and the Publications Office.<sup>8</sup>

### **The Office of Public Communications**

The Office of Public Communications is in direct contact with individuals who have questions about the Act and the FEC. In response to inquiries and requests for materials by candidates, committees and the general public, the Office of Public Communications handled nearly 46,000 telephone inquiries in 1978 on its six toll-free lines (800/424-9530) and two regular telephone lines. Staff filled an estimated 20,000 individual requests for materials and responded to over 500 general information letters. During 1978, as in previous years, inquiries handled by staff of the Public Communications Office ranged from general information on FEC procedures to registration and reporting obligations for candidates and committees. The Office also refers calls outside FEC jurisdiction to appropriate State or Federal agencies.

Periodically in 1978, the Office of Public Communications arranged FEC-sponsored seminars at various locations across the United States. On occasion, FEC staff and Commissioners participating in seminars focused on issues of particular interest to certain groups. More often, seminars were general in scope, encompassing basic points of the law, Commission processes for handling and reviewing reports of candidates and committees, and services and information available from the Commission. A good portion of the eight seminars held in 1978 was spent responding to questions from participants.

The Commission also accepted invitations to address meetings sponsored by other organizations. During 1978, Commissioners and FEC

staff made public appearances in a majority of the 50 States and the District of Columbia. They addressed such widely diverse groups as A Presidential Classroom for Young Americans, the Federal Bar Association, the American Land Title Association, the Ohio Council for Social Studies and the Committee on Continuing Education.

The Public Communications Office also assumed responsibility for an "educational outreach program," a new procedure in the Commission's nonfilers program. (For a detailed description of the nonfilers program, see Chapter 3, pages 17-18.) A "prior notice" was sent before each State primary to all candidates running for Federal office in the State and to their principal campaign committees. The prior notice reminded candidates and their committees of the Act's registration and reporting requirements. Approximately one week after the prior notice mailing, Public Communications staff tried contacting candidates' principal campaign committees by telephone to offer assistance with any difficulties they might have encountered in registering or reporting.

The program was repeated for the general election period and encompassed all candidates and committees on general election ballots. Two to three weeks before the general election, another series of telephone calls was made, principally to unregistered candidates and to minor party, independent and write-in candidates.

Prior notices were also sent to all candidates and all political committees registered with the Commission, reminding them of deadlines for quarterly and year-end reports.

Lists of newly registered candidates and committees provided by the Commission's Coordinator of State Disclosure helped implement another facet of the educational outreach program. (For a description of this Commission operation, see Chapter 3, page 18.) To facilitate compliance with the Act, those on the lists

<sup>8</sup>The Information Division also includes the National Clearinghouse on Election Administration. For detailed information, see Chapter 6.

received information packets containing brochures and forms. Individuals who were recognized by States as qualified candidates, but who had not registered under the Act, also received a registration packet. These included candidates who had not formally declared their candidacy, but who could be defined as candidates under the Act.<sup>9</sup>

#### Press Office

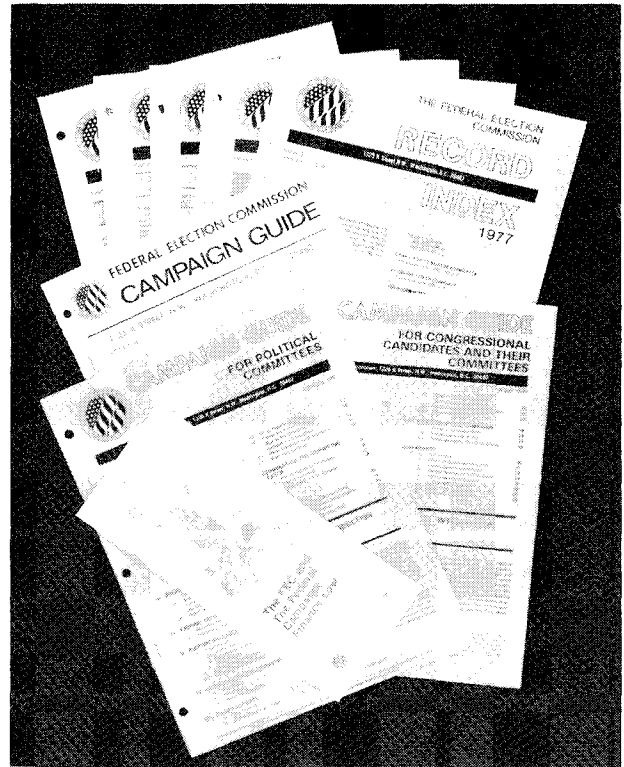
During 1978, the Press Office handled approximately 6,000 calls from media sources around the country. By coordinating all media questions and requests for information, the Press Office insured uniform dissemination of information concerning Commission policies and actions.

In addition to responding to inquiries, the Press Office issued 65 press releases on Commission decisions, policies and actions, as well as notices of Commission meetings in 1978. Eleven of these press releases focused on statistical studies published in the FEC's *Reports on Financial Activity* series. These press releases served as a conduit for widespread dissemination of campaign finance information by print and broadcast media.

The Press Office received all public inquiries about compliance matters, and was responsible for placing closed compliance cases on the public record. Additionally, it handled requests for information filed under the Freedom of Information Act.

#### Publications Office

In 1978, the Publications Office overhauled its *Campaign Guide* series to consolidate in a single publication all information pertinent to one audience. Three different Guides are now available for three respective audiences: The *Campaign Guide for Congressional Candidates and Their Committees*, the *Campaign Guide for Political Committees* and the *Campaign Guide for State and Subordinate Party Committees*.



Commission publishes a variety of materials to help candidates and political committees understand the campaign finance law.

Information on Commission activities and decisions was published in one central source, the *FEC Record*, the Commission's monthly newsletter. During 1978, the *Record* expanded its coverage to include certain announcements previously carried in the *Federal Register*.

While the Publications Office's first priority continued to be satisfying the informational needs of its clients -- candidates running for Federal office and the committees which support them -- the Office fulfilled a second objective in 1978. It published a general information pamphlet intended for wide public distribution. *The FEC and the Federal Campaign Finance Law* included historical background on the Commission, a brief summary of the Act and a description of how the Commission administers

<sup>9</sup>See 2 U.S.C. §431(b).

it. An initial mailing of approximately 12,000 copies went to political committees, election officials and other interested organizations. By December 1978, the Commission had also received 700 requests for more than 26,000 copies of the brochure. (For a complete list of FEC publications, see Appendix 8.)

## **The Audit Process**

The FEC's Audit Division is charged with verifying campaign finance information through audits of candidates and committees. From the inception of its audit program in 1975, however, the Commission has stressed the importance of using its audit staff to help educate candidates and committees on proper recordkeeping and reporting procedures.

As an integral part of all field audits, therefore, the auditors routinely advise the auditee of any disclosure or compliance problems found during the audit. When appropriate, auditors recommend amendments to committees' reports and offer suggestions to improve accounting procedures. The Audit Division also began updating its *Bookkeeping and Reporting Manual* during 1978. The Manual is a compendium of bookkeeping procedures to assist Federal candidates and political committees in preparing reports required under the Act. (For a full description of how the Audit Division meets its monitoring objectives, see Chapter 3, pages 19-20.)

## **Assistance Provided by Reports Analysts**

The Reports Analysis Division assigns teams of analysts to review reports submitted by specific categories of filers. (See Chapter 1, page 3.) For example, one team reviews reports filed by candidates for the House of Representatives; another team reviews nonparty committee reports. This system permits reports analysts to become familiar with the reporting and recordkeeping procedures, contribution limits and financial transactions characteristic of a specific

category of filers. Candidates and committees informally contact these analysts for guidance on meeting their reporting obligations and filling out reports. The analysts also familiarize candidates and committees with methods of retrieving campaign finance information from the Commission's computer.

## **Public Accessibility to FEC Information**

During the three and one-half years it has been operational, the Commission has always been a "sunshine agency," debating and deciding on its agendas in full public view. The Commission formalized this commitment in 1977 when it adopted its Sunshine Act Regulations. These Regulations require FEC meetings to be publicly announced in advance and conducted in open session, except when Commissioners discuss alleged violations of the Act, audits and personnel matters.

In 1978, virtually all items discussed at the Commission's open meetings, including substantive issues, were available in written form before meetings began. Any interested person can attend an open meeting. If the meeting room is full, a loudspeaker carries the discussion into an adjacent room where the proceedings can be clearly heard.

## Chapter 3 Monitoring the Act

17

Monitoring compliance with the Act requires the coordinated efforts of three divisions within the Commission: the Reports Analysis, Audit and Data Systems Development Divisions. Efforts by reports analysts to secure additional or more accurate information from filers enables the Commission to perform its disclosure function more effectively. Disclosure can only be as accurate and complete as the reports which are filed. In addition to improving disclosure, monitoring activities encourage compliance with the Act's reporting requirements. Filers may respond directly, for example, to analysts' requests for more information. Or they may feel compelled to file complete and timely reports because they know the Commission reviews each document filed, checking information against computer indices updated daily by the Data Systems Development Division. Finally, review of documents by reports analysts and field work by auditors may uncover possible violations of the Act. In this context, monitoring can be seen as a prelude to enforcement procedures.

### Monitoring Reporting Obligations

Reports analysts review reports filed by candidates and committees in an effort to ensure accurate and complete disclosure and to encourage compliance with the Act's reporting requirements. If an analyst identifies an error or omitted information in a report or statement, the Reports Analysis Division sends the filer a Request for Additional Information (RAFI). If the filer fails to provide adequate information, the matter may ultimately be referred to the Office of General Counsel for review and further compliance action. Similarly, if a preliminary review of a report indicates on its face an "apparent violation," such as acceptance of a contribution in excess of statutory limits, a Surface Violation Letter is sent to the filer. If the filer ultimately fails to supply a satisfactory response to the inquiry, the Reports Analysis Division refers the matter to the Office of General Counsel. Or, if a report or a series of reports filed by a candidate or committee

contains accounting irregularities which RAFIs cannot clarify, the Reports Analysis Division refers the matter to the Audit Division for further investigation and a possible field audit.

A revised *Review Manual* provides guidelines to analysts for determining the accuracy, completeness and uniform treatment of reports filed by Senate and House candidates. The Manual was developed in 1978 by the Reports Analysis Division in conjunction with the Office of Planning and Management.

### The Nonfilers Program

To monitor the Act's disclosure requirements in 1978, the Reports Analysis Division supplemented and expanded the nonfilers procedures originally adopted in 1976. During the 1978 election period, these procedures focused on two major areas: registration requirements and reporting obligations. Specifically, the Commission monitored failure to: register as a candidate; designate a principal campaign committee; designate an authorized committee; file a Statement of Organization; register as a political committee; or file required reports of receipts and expenditures. In addition, the Commission established a four-person nonfilers team within the division to identify filers who failed to file required reports prior to elections.

To ensure reporting by candidates and committees, the 1978 nonfilers program also incorporated an educational outreach effort. The Office of Public Communications sent prior notices to all candidates and their principal campaign committees before each primary election. The Office then made a second attempt to remind candidates of their registration and reporting obligations by telephoning principal campaign committees prior to the State primaries, and political and candidate committees prior to the general election. (See Chapter 2, pages 19-20 for more details on this program.)

The Commission established a more structured approach to tracking nonfilers during 1978. With support from the Data Systems Develop-

ment Division, a computer-generated list was created periodically by the Reports Analysis Division from State ballot listings. The computer list consisted of names of candidates and committees required to file reports for given reporting periods. Candidates and committees who met filing deadlines were deleted from the list. The remaining list of nonfilers was circulated to the Commissioners for their review. Upon the receipt of an affirmative vote of four Commissioners, the list was then transmitted to Western Union along with the text of a notice indicating the Commission had found "reason to believe" a violation of the Act had occurred. Mailgrams were then dispatched to nonfilers. Followup calls by reports analysts again advised nonfilers of their filing obligations.

If mailgram recipients did not respond adequately, or failed to respond at all, after an affirmative vote of four Commissioners a second mailgram was sent stating the Commission found "reasonable cause to believe" the Act had been violated. Continued noncompliance with reporting requirements resulted in the Commission's publishing the names of those candidates and committees who failed to file as required in the Act.<sup>10</sup> The Commission published the names of 1,054 such nonfilers during 1978.<sup>11</sup> As of February 2, 1979, 437 of these nonfilers had filed reports and were in compliance.

In addition to publishing the names of nonfilers, the Commission has authority to undertake further enforcement action, including civil court enforcement and the imposition of civil penalties.

#### **Nonfilers Procedures at the State Level**

The Act requires candidates and committees to file copies of their Federal campaign finance

reports with their Secretary of State or equivalent State elections officer.<sup>12</sup> Each of the 50 States therefore maintains copies of these campaign finance reports for public inspection and copying.

The Act does not, however, require the States to notify nonfilers or late filers of their filing obligations. This monitoring task was the responsibility of the Commission's Coordinator of State Disclosure, an office within the Reports Analysis Division. By comparing the FEC's computerized list of Federal candidates with those of the States, the Commission could determine which candidates failed to file copies of their reports with the States. As a result of this kind of cooperation, the incidence of nonfiling at the State level was reduced by approximately 80 percent during 1978.

The Coordinator of State Disclosure also obtained State ballot lists of Federal candidates who had filed with State election officers. The FEC then sent these candidates information on their registration and reporting obligations under the Act, as well as prior notices reminding them of reporting dates. (See Chapter 2, pages 14-15 for more detail on this function.)

In conjunction with the Clearinghouse for Election Administration, the FEC in turn provided State and local officers with support services. During 1978, many State election officials visited the Commission to determine how reports were processed; to review compliance procedures; and to acquaint themselves with the FEC's computer system, microfilm processes and disclosure procedures.

### **Monitoring Contribution Prohibitions and Limitations**

A new computer program developed in 1978 will be implemented in 1979 to facilitate reports analysts' monitoring of individual contributions

<sup>10</sup> 2 U.S.C. §438(a)(7).

<sup>11</sup> This figure reflected failure to file the following reports during 1978: monthly reports; quarterly reports; pre- and post-primary reports; and pre- and post-general election reports. This figure does not include party, nonparty and independent expenditure committees who failed to file pre- and post-general election reports.

<sup>12</sup> 2 U.S.C. §439.

to candidates, national party committees and other political committees to determine possible instances of excessive contributions. The computer program will also enable the Commission to monitor contributions by other political committees as follows: multicandidate committees may be monitored for contributions to candidates, national party committees and other political committees; and party committees may be monitored for transfers to candidates and other political committees.

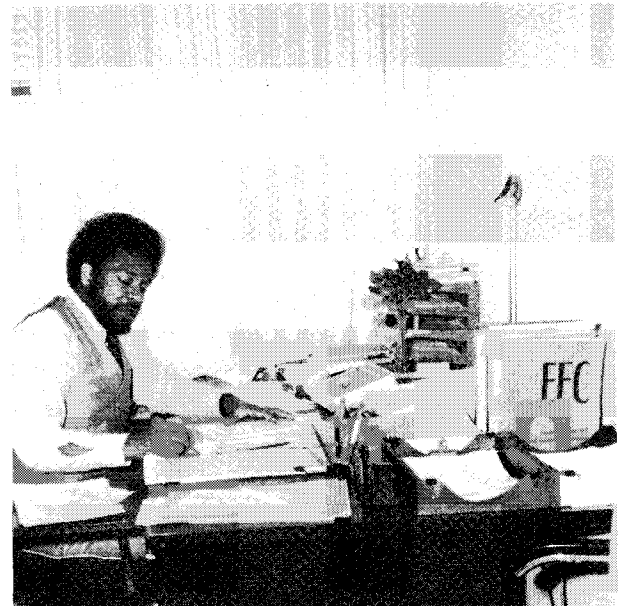
## Auditing Reports

Through the Audit Division's audits of candidates and committees, the Commission directly verifies campaign finance information. In addition to requiring audits of Presidential candidates receiving public funding, the Act requires the Commission to audit from time to time other committees with reporting obligations under the Act.<sup>13</sup>

In conducting field audits of political committees during 1978, the Commission had three objectives: verifying reporting accuracy, determining compliance with the Act and providing guidance in bookkeeping procedures. During 1978, the Audit Division's field audits included 60 State party committees and four nonparty committees. The Audit Division also finalized and made public 110 audit reports, including: 81 Congressional audits, 13 State party audits and six audits of national Congressional campaign committees.

In December 1978, the Commission reaffirmed the Audit Division's current audit policy, adopted in November 1976 and revised in April 1978. This policy covered audit activity to be conducted during the remainder of Fiscal Year 1979.

<sup>13</sup> 2 U.S.C. §438(a)(8).



Audit manager reviews audit performed by FEC staff.

The approved policy called for audits of all categories of committees registered under the Act, including referral audits approved by the Commission. (Referral audits include candidates and committees, referred by the Reports Analysis Division or the Office of General Counsel, whose reports and statements indicate a need for assistance in improving reporting or recordkeeping systems.) Top priority would be given to winding up the last of the 1976 Presidential audits and the first cycle of the nonparty and party committee audits. (The status of FEC audits, as of January 10, 1979, is summarized in Appendix 11.)

## Findings of House and Senate Audits

In August 1978, the Commission approved the Audit Division's *Report on the Random Audits Conducted of Congressional Elections*, compiled from 106 audits of Congressional candidates and their committees. The Report summarized the findings of the audits and described the areas

which posed particular problems for candidates and committees. The highest rate of error, the Report found, occurred with regard to some of the least complicated requirements of the Act.

The Report highlighted the four most frequent errors or omissions noted during the audits:

1. *Inadequate Supporting Documentation for Expenditures* (11 CFR 10219(c))

Many committees audited had not obtained and/or kept receipted bills, stating the particulars for expenditures in excess of \$100 (or those which aggregated in excess of \$100 to the same payee) during the calendar year. Where a receipted bill was not available, the committees had failed to keep, as an alternative, the cancelled check showing payment, together with the bill, the invoice or a contemporaneous memorandum of the transaction **supplied by the payee**.

2. *Failure to Itemize Contributions and Expenditures* (2 U.S.C. § 434(b)(2) & (9))

The committees frequently failed to itemize a series of contributions which, in the aggregate, exceeded \$100 in a calendar year from the same contributor or a series of expenditures which, in the aggregate, exceeded \$100 to the same person during a calendar year.

3. *Failure to Itemize All Transfers Received Or Made* (2 U.S.C. § 434(b)(4))

Committees did not always itemize all transfers,<sup>14</sup> despite instructions on the reporting forms and schedules. Most of the undisclosed transfers were in amounts of \$100 or less, suggesting that the committees were unaware of the requirement to itemize any transfer, regardless of amount.

4. *Acceptance of Prohibited Contributions*

A substantial number of committees accepted contributions from corporate and labor sources (2 U.S.C. § 441b). Committees also accepted contributions in excess of the dollar limitations (2 U.S.C. § 441a).

<sup>14</sup> The Act defines a transfer as a contribution (of any type including, for example, contribution in-kind) from a political committee or political organization to a candidate (or his/her authorized committee) or another political committee. (2 U.S.C. 100.4(a)(4); 106.1(b)).

### Proposed Changes in Bookkeeping and Reporting Procedures for 1980 Elections

Based on the cumulative experience of auditing Presidential committees in the 1976 election period and other political committees since 1976, the Audit Division proposed a comprehensive package of new bookkeeping and reporting procedures for the 1980 election cycle. Focusing primarily on the matching funds and reporting requirements of Presidential candidates qualifying for public funding, the new procedures were designed to fill procedural gaps and solve other problems encountered in the 1976 election period.

During 1978, the Commission adopted guidelines prepared by the Audit Division on itemizing the "particulars" of expenditures in campaign finance reports of non-Presidential candidates and committees. Under these new guidelines, the particulars (or purpose) of expenditures would be characterized under any of the following categories: "Transportation, consulting/professional fees, surveys/polls, advertising, printing/photography, fundraising, administration/operating, postage and meetings." The following three categories, however, would not be acceptable:

1. "Credit Cards." Instead, the particulars (i.e., one of the categories listed above) of the credit card expenditures would have to be disclosed, together with the identification of each person (including hotels, restaurants, etc.) to whom expenditures were made by credit card in an aggregate amount exceeding \$100.
2. "Get-Out-The-Vote/Election Day," i.e., when such expenditures exceeded either \$1,000 to any one person or \$2,500 to all persons during a reporting period. Instead, the particulars (i.e., those categories listed in the paragraph above) of each actual election-day expenditure would have to be disclosed.
3. "Advances." Instead, the particulars of the actual use of each expenditure (i.e., those categories listed in the paragraph above) would have to be disclosed.

## Chapter 4

# Enforcing the Act

21

### Enforcement Procedures

The Federal Election Campaign Act, as amended, vests the exclusive primary jurisdiction for the civil enforcement of the Act in the Federal Election Commission.<sup>15</sup>

Possible violations of the Act come to the Commission's attention either through the FEC's own internal monitoring procedures or by formal complaints originating outside the Commission. The potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MURs).

At each stage in the enforcement process, the confidentiality of the investigation is maintained<sup>16</sup> and respondents are afforded a reasonable opportunity to demonstrate that no action should be taken against them. If a preliminary investigation determines that there is "reasonable cause to believe" a violation of the Act has occurred, the Commission is required to seek informal methods of settling cases by conference, conciliation and persuasion. If a conciliation agreement cannot be reached, the Commission may find there is "probable cause to believe" the Act has been violated and authorize the filing of a civil enforcement action in United States District Court. The Commission may also refer the case to the Attorney General for criminal prosecution if it "determines that there is probable cause to believe that a knowing and willful violation" of the Act has occurred or is about to occur.<sup>17</sup> The Commission may enter into conciliation agreements with respondents which require the payment of civil penalties. After compliance cases are closed, the Commission makes public the names of the parties involved and the case file.<sup>18</sup>

<sup>15</sup> Pursuant to 2 U.S.C. §437c(b)(1).

<sup>16</sup> See 2 U.S.C. §437g(a)(3).

<sup>17</sup> 2 U.S.C. §437g(a)(5)(D).

<sup>18</sup> In accordance with 2 U.S.C. §437g(a)(6)(C).

### Enforcement Statistics

Annual Caseload — Chart I		
Status of Cases	1977	1978
Pending at the Beginning of Year	78	93
Opened During Year	133	481
Closed During Year	118	401
Pending at End of Year	93	173

Disposition of Cases — Chart II			
	6-1-75 to 12-31-77	1978	Total
Files* Closed After Preliminary Review	273	169	442
Files Closed After Investigation	35	97	132
Conciliation Agreements Signed	48	97	145
Files Closed Prior to Authorizing Civil Action			
Nonfilers	0	64	64
Other	1	7	8
Files Closed with Authorization of Civil Action			
Nonfilers	36	16	52
Other	10	21	31
<b>Total Files Closed</b>	<b>403</b>	<b>471</b>	<b>874</b>

\*A file may contain more than one MUR.



During 1978, the Office of General Counsel more than tripled its enforcement caseload. As indicated by Chart I above, the Office of General Counsel opened 481 enforcement cases in 1978 as compared to 133 in 1977. As indicated by Chart II, the total number of enforcement cases processed in 1978 represented a significant increase over the total number of cases handled in the two and one-half preceding years. The Office of General Counsel closed 471 enforcement cases during 1978 alone, as compared to 403 enforcement cases from June 1975 through December 1977.

The Office of General Counsel also reached the final stages of conciliation or litigation in more enforcement cases during 1978 than it had in previous years. The 1978 election period accounted for approximately 70 percent of all the Commission's offensive litigation. A large portion of the remaining offensive litigation was filed in the second half of 1977.<sup>19</sup>

## Issues Addressed in Litigation

When the Commission determined the political activities of individuals, organizations or political committees to be in direct violation of the Federal Election Campaign Act or FEC Regulations, the Commission brought suit in U.S. District Courts to enforce the Act. During the same period, the Commission was named as defendant in several suits challenging its enforcement powers and the constitutionality of the Act. Several suits raised substantive issues summarized below.

### **FEC v. National Education Association, et al.**

In this suit, the Court agreed with the Commission that the use of a reverse checkoff method for soliciting political contributions violated the Act. The National Education Association (NEA) and 17 State affiliates made payroll deductions of its members to support NEA's political action committee, NEA-PAC. Deducted

automatically from the member's paycheck, along with membership dues, the payment to NEA-PAC was refundable upon written request.

The Court ruled that the reverse checkoff procedure is *per se* illegal because it puts undue pressure on the member to make a contribution. The Commission's Regulations specifically state that political contributions may not be obtained as a "condition of acquiring or retaining. . . membership in a labor organization. . . even though they are refundable upon request of the payor." Furthermore, the Court ruled that the method violated that portion of the statute which states that an employee must be informed "at the time of such solicitation of his or her right to refuse to so contribute without any reprisal."

### **FEC v. AFL-CIO**

In December 1977, the Commission filed suit against the AFL-CIO seeking to enjoin the organization from transferring funds from its COPE Education Fund to its separate segregated fund (a political committee). The Commission argued that the transfer violated the provisions in the Act prohibiting labor organizations from using general treasury monies to make contributions or expenditures in connection with Federal elections.

In June 1978, the Court granted the Commission's motion for summary judgment in the case, concluding that transfers from the AFL-CIO COPE Education Fund to AFL-CIO's separate segregated fund were illegal.

### **Court Dismisses Two Suits Challenging Constitutionality of the Act**

Two suits filed against the Federal Election Commission in 1978 challenged the constitutionality of §441b of the Act, which limits solicitations by corporations (and their separate segregated funds (PACs)) for voluntary contributions to their PACs. The United States District Court for the District of Columbia dismissed both suits.

<sup>19</sup> This figure excludes nonfiler litigation.

In *Martin Tractor Company, et al. v. Federal Election Commission, et al.*, filed on July 7, 1978, three corporations and their affiliated PACs, three executives and one hourly employee of one of the corporations were the plaintiffs. They sought injunctive relief and a declaratory judgment that §441b of Title 2 is an unconstitutional violation of plaintiffs' rights under the First and Fifth Amendments of the United States Constitution.

On July 20, 1978, the National Chamber Alliance for Politics, et al. filed suit against the Federal Election Commission, similarly challenging the constitutionality of the PAC solicitation provisions and asking for injunctive relief. Plaintiffs included the Chamber of Commerce (a nonprofit corporation), its separate segregated fund, three executives of the two organizations and one board member of the Chamber of Commerce.

On November 18, the U.S. District Court for the District of Columbia granted the Commission's motion to dismiss the *Martin Tractor* suit. On November 22, the Court dismissed the *National Chamber Alliance for Politics* suit as well. In both orders, the Court said that the special provision of 2 U.S.C. §437h(a), expediting judicial review of constitutional issues, is inapplicable to the plaintiffs. (Section 437h(a) permits the Commission, the national committee of any political party or any individual eligible to vote to bring appropriate actions challenging the constitutionality of the Act.) The individual plaintiffs sue "not in their individual capacities as voters" but rather as representatives of corporate entities.

#### **Republican National Committee et al. v. FEC**

On June 16, 1978, the Republican National Committee (RNC) filed a suit against the Commission. The suit challenged the constitutionality of the provision of the Presidential Election Campaign Fund Act which requires that Presidential candidates who accept public funds for the general election must agree: a) not to make qualified campaign expenses in excess of the

amount of public funds they receive; and b) not to accept private contributions to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in public funds. The RNC argued, *inter alia*:

1. The statutory scheme (described above) violates the First Amendment because it restricts the ability of candidates, their political parties, supporters and contributors to communicate their ideas.
2. The statutory scheme unconstitutionally discriminates against challenging candidates because incumbent Presidents have the advantage of free publicity and significant resources attached to the executive branch (e.g., speechwriters, jet planes, etc.).
3. The statutory scheme discriminates against candidates not politically allied with labor organizations since, under 2 U.S.C. §441b, labor organizations may spend unlimited funds to communicate with their members on political matters and only labor organizations are allegedly in a position to expend such large sums for communication with voters.

The Federal Election Commission filed a motion to dismiss the suit, arguing that:

1. Plaintiffs' constitutional objections had been rejected by the Supreme Court in *Buckley v. Valeo*;
2. Plaintiffs' description of how the Act would impact on the 1980 Presidential campaign is speculative and does not present a "ripe" controversy; and
3. The suit presents political questions not subject to judicial resolution.

The Court denied without prejudice the Commission's motion to dismiss on November 30, 1978, and convened a three-judge district court to hear the case. It also denied the motion of Common Cause et al. to intervene, but permitted them to file briefs *amicus curiae*.

## Cooperating With Other Federal Agencies

Cooperating with other Federal agencies, the FEC worked to streamline compliance procedures and resolve conflicts in jurisdiction during 1978. These efforts facilitated the FEC's role in administering the Federal election law and clarified statutory requirements of candidates and committees. Three such cooperative efforts are detailed below.

### FEC and Federal Communications Commission Issue a Joint Notice on Political Broadcast Communications

To simplify required notices used in broadcast communications, the Federal Election Commission and the Federal Communications Commission (FCC) issued a Joint Public Notice in August 1978. The joint statement provided examples of notices which could be used by broadcast licensees and persons purchasing political broadcast time to satisfy both FCC and FEC requirements. Specifically, the notices could be used to comply with the FEC requirements for authorization (or nonauthorization) notices and FCC rules concerning sponsorship identification.

### FEC and Justice Department Issue Enforcement Agreement

In February 1978, the FEC and U.S. Department of Justice established the general principles by which the Federal Election Campaign Act would be enforced by the two agencies.<sup>20</sup>

Under the agreement, the Justice Department would handle the final disposition of all cases in which there is a "knowing and willful, significant and substantial" violation of the Act. The Federal Election Commission would investigate and dispose of all alleged violations of the Act that do not involve "significant and substantial" violations committed "knowingly and willfully."

Upon determining "probable cause" that a violation is sufficiently substantial in nature and has been committed "knowingly and willfully," the Commission would refer the case to the Justice Department for possible prosecution. If either one of the two standards were not present, the Commission would retain jurisdiction over the case.

In cases where the Justice Department retained final authority, the Department agreed to "apprise the Commission of information" concerning those cases "at the earliest opportunity." The Commission would not, however, be privy to evidence developed during the course of a grand jury proceeding.

### FEC and Federal Aviation Administration Find Solution to In-Kind Contribution

On September 26, 1978, the Federal Aviation Administration (FAA) changed its Regulations to permit private aircraft owners and other noncommercial operators to accept payment for transporting candidates for Federal office. The FAA's action was prompted by the Federal Election Campaign Act and Commission Regulations which require Federal candidates to pay in advance for private air transportation (provided by a corporate or noncorporate owner) if they wish to avoid receiving a contribution in-kind from the aircraft owner.<sup>21</sup> The election law had conflicted with FAA rules which generally prohibit the receipt of payments by any operator who does not have an air taxi or similar commercial certificate. To facilitate operators' compliance with both FAA and FEC Regulations, the FAA action allowed the private aircraft owner to carry a candidate and accept compensation without first becoming a commercial operator.

<sup>20</sup> See *Federal Register*, 43 FR 5441.

<sup>21</sup> See 11 CFR 114.9(e).

## Chapter 5

# Planning for the 1980 Presidential Election Cycle

25

The 1976 elections marked the first time in United States politics that a program of direct public funding was implemented for Presidential elections. Funded through the dollar checkoff on income tax forms, the Presidential Election Campaign Fund provides three separate accounts for the public funding of the three different phases of Presidential campaigns. They are: the Presidential primary matching account, the Presidential nominating convention payment account and the Presidential general election account.

During the 1976 Presidential election period, the Commission's public financing program concentrated on determining the eligibility of Presidential candidates for public financing, verifying matchable contributions in Presidential primaries and certifying public funds. As the program wound down in 1977, the Commission made final certifications of primary matching funds, conducted audits and required subsequent repayments of unused public funds by Presidential campaign committees to the United States Treasury.

Commission meets in open session to consider Regulations for Presidential elections.



In reassessing the public financing program, the Commission considered ways of improving procedural deficiencies made apparent during the implementation of the 1976 public financing program. Hearings were held on the public financing regulations, and new reporting forms for Presidential candidates were approved. As 1978 drew to a close, this reassessment process culminated in a staff proposal for a *Master Plan for Administering the 1980 Presidential Election*. These three areas of reassessment are described in more detail below.

## Hearings Held on Public Financing Regulations

In June 1978, the Commission held public hearings on suggested revisions of FEC procedures and Regulations governing the public financing of Presidential elections. How could the Regulations be amended to reflect the practical political situations encountered during the 1976 Presidential cycle? In seeking responses to this query, the Commission was especially interested in the views of 1976 Presidential election participants. They were asked to comment on:

- Any administrative burdens imposed by the current Regulations;
- Any problems experienced with the record-keeping requirements of the Regulations; and
- Any areas of the Act or Regulations in need of further clarification.

With FEC Chairman Joan Aikens presiding, the Commissioners heard testimony from seven witnesses, including representatives of 1976 Presidential campaigns and a national party committee which received public funds, as well as other interested persons. Comments ranged from detailed suggestions for bookkeeping requirements to policy recommendations on party activities related to Presidential campaigns receiving public funds.

Many of the suggestions and comments received were incorporated into draft revisions of the Regulations which were pending before the Commission at the end of the year.

## New Guidelines and Forms for Reporting Activity

The Commission's analysis of campaign finance reports filed by both Presidential and non-Presidential candidates and committees during 1976 revealed reporting problems. For example, campaign expenditures were not itemized in sufficient detail. Detailed itemization of expenditures is particularly important in Presidential campaign finance reports since Presidential candidates are publicly accountable for how they use funds provided from the U.S. Treasury.

The Commission's reassessment of 1976 reporting procedures precipitated such questions as: What constitutes an adequate disclosure of the "particulars" of campaign expenditures? How should credit card expenditures be reported? Must a Presidential campaign submit the occupation and principal place of business for persons contributing more than a combined total of \$100 to all the candidate's committees, but less than \$100 to each one?

To ensure that the disclosure requirements of the Act are met by complete, accurate reporting of campaign contributions and expenditures, the Commission took several measures:

- It approved a new packet of reporting forms (FEC Form 3P and schedules) for Presidential candidates. The Presidential reporting forms will facilitate the monitoring of expenditure limitations for nominees or candidates who accept public funding.<sup>22</sup> Additionally, Sched-

<sup>22</sup> Eligible Presidential primary candidates may receive public funds to match small contributions of up to \$250 from individual contributors. To be eligible for matching payments, a candidate must first raise funds exceeding \$5,000 in each of 20 States, consisting of contributions from individuals of \$250 or less. The candidate must also agree to limit expenditures for all primaries to \$10 million (plus a cost-of-

ule G-P requires the disclosure of the "ultimate payee" of campaign "advances" expended by campaign workers.

- It directed staff to draft new regulations on the disclosure of "particulars" of expenditures by Presidential candidates and committees. The regulations would track the guidelines on "particulars" of expenditures for non-Presidential candidates and committees which the FEC adopted in August 1978. (For a description of these non-Presidential guidelines, see Chapter 3, page 20.)
- The Commission also undertook the preparation of a systems manual for Presidential candidates eligible for primary matching funds. The manual will provide guidelines for establishing a computer-based accounting system, budgeting processes, mailing list operations and management reporting procedures for committee officials. The systems manual will incorporate the most effective systems and controls used by candidates who received public funds in 1976.

Presidential general election. It spelled out procedures for handling submissions for certifications, problems uncovered during review of disclosure reports, and audit issues and reports.

Under the Master Plan, the Commission would establish a "Presidential Team," responsible for coordinating the Commission's public financing activities. In addition, the Presidential Team would oversee FEC Presidential units assigned to work with each Presidential campaign on a day-to-day basis. Each unit would have primary responsibility for coordinating FEC activity related to one particular campaign. The Presidential units would also assist the campaigns with bookkeeping and reporting procedures. The unit's staff of experts would be readily accessible for a quick and informed resolution of problems the campaign committee might encounter.

## **Master Plan for the 1980 Presidential Election**

For purposes of the Federal Election Campaign Act, the 1980 Presidential election cycle commences in January 1979. At that time, Presidential candidates may begin raising funds that will qualify them for matching fund certification.

During 1978, the Commission's Presidential Task Force formulated a Master Plan for effective administration of the 1980 election cycle. The three-pronged Plan covered the public funding of the Presidential primary elections, the Presidential nominating conventions and the

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living adjustment and exemptions for fundraising and certain legal and accounting expenses). In the general election, each major party Presidential nominee becomes eligible for a public grant of \$20 million. If candidates accept public funding, they must limit expenditures to that amount (plus cost-of-living adjustment and certain exemptions) and may not accept private contributions. Minor or new party candidates may qualify retroactively for public funds.

Clearinghouse studies are available to the public in its Document Center.



## Chapter 6

# Clearinghouse for Election Administration

29

Recognizing a need for the systematic collection and sharing of election administration information, Congress in 1971 created a National Clearinghouse for Information on the Administration of Elections within the General Accounting Office. The unit was transferred to the Federal Election Commission by 2 U.S.C. §439(b) of the Federal Election Campaign Act Amendments of 1974. This section of the Act directs the Commission to serve as a clearinghouse for information with respect to the administration of elections and to conduct independent contract studies of the administration of elections. Studies are to include, but are not limited to: methods of selecting and the responsibilities of election board officials, personnel practices relating to the registration of voters, as well as voting and vote-counting methods. Finally, the statute provides that the research products issuing from these efforts be made available to the general public at cost.

### Clearinghouse Research Program

Clearinghouse resources are devoted largely to research projects on topics of special concern to election officials and which are beyond the scope or capacity of any one State or local jurisdiction. Such research efforts take one of two forms: Contract research projects or in-house staff research projects.

#### Contract Research

The contract research effort constitutes the largest single item in the Clearinghouse budget. Research topics and specifications are selected in conjunction with the Clearinghouse Advisory Panel and typically focus on one of the election functions or a troublesome aspect of them. A normal research contract requires a review of the literature and history on the topic, a review and documentation of relevant State and Federal laws, a survey of relevant current practices around the nation, and a set of recommenda-

tions or models appropriate to the varied needs and resources available in State and local jurisdictions. Each project normally issues more than one report so that the pertinent information can be directed to the particular audience (State officials, local administrators or State legislators) for whom it is intended.

As an additional measure to ensure the utility and readability of the final reports, each contractor is required to establish an advisory board of five to eight election officials or area experts. This board serves as both a resource for and a reviewer of the contractor's work. (For a detailed description of research contracts ongoing, completed and underway, see Appendix 8.)

#### Staff Research

Internal staff research projects absorb a significant portion of Clearinghouse staff time. These projects range in depth and intensity from those of rapid information retrieval using the Documents Center (described below) to research projects requiring several weeks' analysis. Projects of this type are undertaken in response to requests from State or local election officials or legislators; Members of Congress or their staff; representatives of foreign governments; or other divisions within the Commission itself.

#### Research Reports

Clearinghouse research reports are provided free of charge to Federal, State and local government officials. Members of the general public may purchase copies from the Department of Commerce, National Technical Information Service. (See Appendix 8 for a complete listing of Clearinghouse reports.)

### Clearinghouse Information Program

In addition to its research efforts, the Clearinghouse plays an active role in collecting and disseminating information about the election process.



### **Clearinghouse Documents Center**

The central physical feature of the Clearinghouse is its Documents Center which is rapidly becoming the largest national resource for information about election administration and procedures. In addition to housing general and historical works, the Documents Center maintains statistical summaries of voter registration, voter turnout and election returns for Federal offices; State and Federal election laws, hearings and case law; State and local forms, sample ballots and procedures; and other reports, theses and analyses relevant to election administration. The Documents Center serves as the principal resource for staff research projects and is available to election administrators, legislators and members of the general public.

### **FEC Journal of Election Administration**

The Clearinghouse's primary means of communication with election administrators around the country is the *FEC Journal of Election Administration*, published quarterly.

The *Journal* is designed to provide a forum for national discussion of problems in election management and, as such, publishes articles submitted by Federal, State and local election-related officials. The *Journal* also keeps readers informed of Clearinghouse activities, services and reports. The *Journal* is currently distributed to approximately 10,000 State and local election officials and legislators whose addresses are categorized and maintained in the FEC computer system.

## **Clearinghouse Assistance Program**

Consonant with its mission of serving as a clearinghouse of information on election administration, the Clearinghouse staff responds to a variety of requests for personal appearances and assistance. In addition to accepting speaking engagements at national and State organizations

and associations, the Clearinghouse has provided specific assistance to State legislatures, legislative committees and State commissions which contemplate changing their election administration laws and procedures. At the same time, the Clearinghouse frequently serves as a general information service by directing State and local officials to the Federal agency or official concerned with their particular problem.

### **Clearinghouse Seminars**

The Clearinghouse staff will also be sponsoring a series of five regional workshops on Election Administration during 1979. The workshops will provide useful information to State and local election officials in such areas of election administration as: absentee registration and voting; planning, managing and budgeting election offices; statewide voter registration; voting equipment; and training and redistricting.

### **Clearinghouse Advisory Panel**

To help ensure that the activities and research projects of the National Clearinghouse are consistent with the needs and priorities of election officials around the country, the Commission approved in 1976 the formation of a Clearinghouse Advisory Panel.

The Advisory Panel is composed of 20 State election officials, local election administrators, and State legislators appointed for two-year terms. Ten appointments are made each year. The three-tier, bipartisan character of the Panel provides a wide-ranging view of election administration and offers the first national forum of its kind for discussion of problems in planning and managing elections.

The Panel meets twice annually to review the current problems and priorities in election administration, to review Clearinghouse research projects and services and to make recommendations to the Commission for future projects and activities. It also serves as a liaison between the Clearinghouse and other Federal, State and local agencies. During 1978, the Panel met on January 9-10 and again on August 14-15.

# Chapter 7

## The Commission's Organization and Management

31

### Organization

The Federal Election Commission, created by the Federal Election Campaign Act (the Act), is composed of six Presidentially appointed Commissioners and two ex-officio nonvoting members, the Secretary of the Senate and the Clerk of the House of Representatives. In addition, the law provides for two statutory officers appointed by the Commission: the Staff Director and the General Counsel. By statute the Staff Director appoints and sets the pay of subordinate staff, with the approval of the Commission.

During 1978, the various subdivisions of the Commission were organized as follows:

1. Commissioners and their immediate staff
2. Staff Director's Office (including Office of Planning and Management and Commission Secretary's Office)
  - Administration
  - Audit
  - Data Systems Development
  - Information
  - Public Disclosure
  - Reports Analysis
3. Office of General Counsel
  - Litigation and Enforcement
  - Regulations and Legislation
  - Advisory Opinions and Policy

As of December 31, 1978, Commission staff totaled 223 permanent employees and 32 temporary employees.

### The Commissioners

The Commissioners are responsible for overseeing the Federal Election Campaign Act codified in Titles 2 and 26 of the U.S. Code. More specifically, the Commissioners administer the Act's provisions, seek to obtain compliance with its requirements, and formulate policy with regard to its implementation. All decisions must be made by a majority vote of the members; four affirmative votes are required to approve

Regulations, render advisory opinions and take certain actions in connection with enforcement.<sup>23</sup>

Joan D. Aikens, former Vice Chairman of the Commission, was unanimously elected Chairman by her fellow Commissioners on May 12, 1978; Robert O. Tiernan was unanimously elected Vice Chairman. Both assumed office on May 21, 1978. From May 1977 to May 1978, Commissioner Thomas E. Harris had served as Chairman of the Commission. By statute, any Commissioner is limited to a single, one-year term as Chairman. The Chairman and the Vice Chairman must be affiliated with different political parties. Both the Secretary of the Senate and the Clerk of the House are represented at the Commission by Special Deputies who maintain offices at the Commission and who are nonvoting participants in all Commission meetings and operations.

On October 25, 1978, John McGarry was sworn in as a new Commissioner of the FEC, replacing Neil Staebler, whose term had expired on April 30, 1977. Mr. Staebler had continued to serve on the Commission pending the swearing-in of a successor. President Carter appointed Commissioner McGarry under the "recess appointment" clause of the U.S. Constitution (Article II, §2).

Generally meeting twice a week during 1978 (once in open session and once in closed session), the Commissioners considered an increasing number of compliance cases; defined audit policies and procedures; held repayment hearings regarding the return of Federal matching funds by a Presidential candidate to the U.S. Treasury; held hearings on suggested revisions to Commission procedures and Regulations governing public financing of Presidential elections; and considered procedures for administering the Presidential Election Campaign Fund during the 1980 Presidential election cycle. Other activities included approval of the FEC's Freedom of Information Act Regulations and guidelines for

<sup>23</sup>See 2 U.S.C. §437(c).

disclosure of particulars of expenditures by non-Presidential candidates and committees; and the rendering of an increasing number of advisory opinions. With the Federal Communications Commission (FCC), the FEC also issued a joint public notice detailing examples of notices which may be used in broadcast communications to comply with both FCC and FEC requirements.

#### **Office of the Staff Director**

The Staff Director is the executive officer responsible for staff appointments and organization and, together with the General Counsel, for the implementation of Commission policy through a variety of programs. The Deputy Staff Director reports directly to the Staff Director. He has broad responsibility for assisting in the supervision of all phases of Commission activity, particularly planning and procedural development.

*Reports Analysis Division Created.* In January 1978, the Reports Analysis Division was established to give the Commission greater capabilities in monitoring and enforcing the disclosure requirements of the Act, particularly through a more comprehensive analysis of reports, a systematic application of nonfiling procedures and a more structured approach to pre-compliance notifications. Reporting to the Office of the Staff Director, the division is divided into House, Senate, Presidential, Party and Multicandidate committee branches. (For more information concerning the functions of this division, see Chapter 1, pages 3, 5-7, and Chapter 3, pages 17-19.)

A document center containing all original reports filed with the FEC and a Coordinator of State Disclosure support the Reports Analysis Division in its operations. (See Chapter 3, page 18 for a full description of the Coordinator of State Disclosure's functions.)

#### **Office of General Counsel**

The General Counsel directs the enforcement activities of the Commission and represents the Commission in all enforcement matters and

litigation. The Office of General Counsel is also responsible for drafting regulations and advisory opinions for the Commission's consideration, and for advising the Commission on any legal matter which comes before it.

The Associate General Counsel is responsible for coordinating legal policy of the Office and serves as Acting General Counsel in the Counsel's absence.

## **Management and Budget**

#### **The Office of Planning and Management**

The Office of Planning and Management completed its second year of operations in 1978. Reporting directly to the Staff Director, the Office worked in conjunction with the Budget Task Force to prepare the Commission's budget and evaluate the Commission's programs as to their consistency with agency objectives. Additionally, the Office of Planning and Management reviewed all FEC reporting forms, manuals and recordkeeping systems, and helped revise the budget process described below.

In Fiscal Year 1979, the Office plans to computerize the Commission's Management Information System. In addition, the Office will develop and implement internal review procedures for Commission programs.

#### **The Budget**

The Commission uses zero-based budgeting principles in determining budget outlays to FEC programs. Under this system, the managers of Commission divisions and offices identify program objectives designed to achieve one or more of the Commission's four major objectives:

1. Administer public funding of Presidential candidates;
2. Obtain compliance with the Act;
3. Facilitate public disclosure of information on campaign finance activities of candidates and committees; and
4. Serve as a Clearinghouse for Election Administration Information.

Each manager prepares program packages for three levels of activity (minimum, current and expanded) in each program area. The Budget Task Force, chaired by a Commissioner, then makes its budget recommendations after evaluating the alternative program packages submitted by managers.

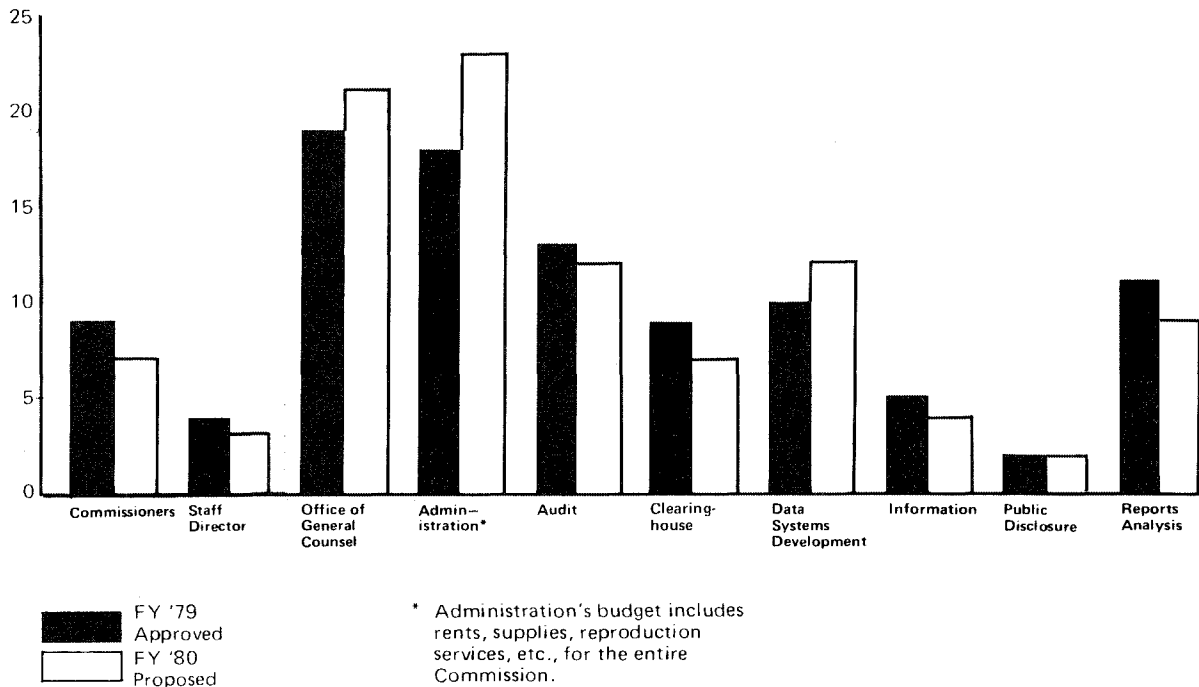
The Office of Planning and Management reviews the submissions for adherence to zero-based budgeting principles and for correctness of calculations. The program packages are then evaluated in terms of their ability to achieve the Commission's four major objectives. An overall

management plan is then drawn up encompassing all FEC activities. As the fiscal year progresses, the Management Information System, a work reporting system, measures the progress of each division or office in achieving the objectives of the management plan.

This planning and budgeting system helps monitor budget outlay program results. It also provides more accurate data for future budget planning. Each month, managers report staff costs allocated among ongoing programs. Planning and Management reports this information to the Commission each month along with program output reports.

## Budget Allocation

(Figures are percents of Total Budget)



In Fiscal Year 1978, the Commission received an annual budget appropriation of \$7,300,000 plus a supplemental appropriation of \$310,000 to compensate for the October 1977 cost-of-living increase. These monies were expended during the fiscal year as follows:

Commission and staff salaries, including benefits	\$4,680,436
Consultants	0
Travel	205,462
Transportation & Motor Pool	15,509
Commercial Space	778
Equipment Rental	170,952
Printing	159,180
Contracts	1,485,660
Administrative Expenses	148,103
Supplies	110,556
Library Materials	19,684
Telephone	152,258
Postage	24,064
Space Rental	254,182
Equipment Purchases	173,176
<b>TOTAL</b>	<b>\$7,600,000</b>

For Fiscal Year 1979, the Commission received an annual appropriation of \$8,000,000. Expenditure of these funds is budgeted as follows:

Commission and staff salaries, including benefits	\$5,318,884
Consultants	10,000
Travel	324,918
Transportation & Motor Pool	15,506
Commercial Space	0
Equipment Rental	191,850
Printing	220,916
Contracts	993,244
Administrative Expenses	150,230
Supplies	96,098
Library Materials	22,000
Telephone	148,600
Postage	57,000
Space Rental	376,956
Equipment Purchases	73,798
<b>TOTAL</b>	<b>\$8,000,000</b>

An appropriation of \$10,697,000 has been requested for Fiscal Year 1980.

The graph on page 33 compares the budget allocation of resources among FEC divisions for Fiscal Years 1979 (approved) and 1980 (proposed).

#### **Computer Support -- Data Systems Development Division**

The Data Systems Development Division, in conjunction with the Administration Division, computerized the Commission's payroll, inventory and personnel information operations during 1978. When work is completed on its computer-based budget and accounting systems in 1979, the Commission will take over the final administrative support functions now provided by the General Services Administration.

All Commission divisions increased their use of computer support services in 1978. In providing computer support, the Data Systems Development Division (DSDD) produced approximately 38,000 standard indices of campaign finance information in 1978, and 1,700 other indices.

DSDD also developed new computer programs for categorizing campaign finance information, which enhanced the Commission's ability to disclose campaign finance activity and to monitor compliance with the Act. (See Chapter 1, pages 5-7, and Chapter 3, pages 17-19.)

With the impending expiration of its current contract for data processing services in 1979, DSDD undertook an open and competitive procurement. This process offered an opportunity to inspect the range of services and new techniques available in the computer field to support Commission programs. DSDD staff completed a document for soliciting contract proposals, which was approved by the General Services Administration and released to data processing vendors. Evaluation, award of the contract and installation of the new system will occur in 1979.

FEC staff uses computer system to review campaign finance reports filed by candidates and political committees.



### Personnel

*Labor-Management Relations.* In November 1977, the National Treasury Employees Union (NTEU) filed a petition with the U.S. Department of Labor seeking an election among all professional and nonprofessional employees of the Federal Election Commission to determine if the employees wished to be represented by that union. A hearing was held on the matter in late January and February by the Department of Labor to examine questions raised by the Commission as to whether such Union representation would constitute a conflict of interest for the employees involved and also as to whether professional employees should be included in the bargaining unit. After an extension of time to allow for the cross filing of briefs by the parties, the Assistant Secretary of Labor-Management Relations handed down a decision on July 11, 1978, directing that the election be

held within 60 days, and that professional employees be given an opportunity to vote for their inclusion in the bargaining unit. Excluded from the voting group were management officials and supervisors, confidential employees and employees engaged in personnel work.

On September 7, 1978, a majority of eligible Commission employees voted to make NTEU their exclusive bargaining representatives. By a preliminary vote, a majority of the professional employees voted to be included in the same unit with nonprofessional and temporary employees of the Commission. The Commission began preparing for pending contract negotiations with NTEU in the fall of 1978, and in December negotiating teams from the FEC and the Union met to establish ground rules for the negotiations.

*Orientation and Training for Employees.* The Commission conducts a regular orientation program for new employees which highlights the interdependence among the subdivisions of the Commission. The program helps establish channels of communication for employees within Commission divisions.

By using the professional training programs of other agencies, the Commission provided selected employees with specialized training which the FEC could not duplicate. The Commission is currently establishing an in-house training program for first-line supervisors.

*EEO Program.* From July 1977 to July 1978, approximately \$30,000 was spent on the Commission's Equal Employment Opportunity Program. The Commission's EEO staff consisted of a Director of Equal Employment Opportunity, who devoted approximately 40 percent of his time to EEO work, a Federal Women's Program Coordinator and two EEO Counselors, who devoted approximately 20 percent of their time to EEO activities while continuing their other regular duties.

To implement the Commission's Equal Employment Opportunity Plan, EEO staff continued recruiting activities aimed at filling job vacancies with minority group members. EEO staff also attended several privately sponsored affirmative action job conferences.

During the year, the Commission's Federal Women's Program sponsored a series of seminars on subjects of importance to women in Federal employment, such as access to credit and assertiveness training. Career counseling services were also available.

The EEO staff processed four discrimination complaints during the year. Of these, three were resolved at the informal stage and one reached the formal stage. The formal complaint was withdrawn during the year.

## Chapter 8

# Legislative Recommendations

37

In 1976 Congress enacted the fourth major overhaul of campaign financing laws in slightly over four years. During implementation of the 1976 Act, the Federal Election Commission kept a continually updated list of apparent statutory omissions, inadequacies and other problems. This list served as the basis for the Commission's legislative recommendations in its 1976 Annual Report, submitted in March 1977. Several additional recommendations were made in the 1977 Annual Report, submitted in March 1978.

The Commission reiterates its support for its 1976 and 1977 recommendations and includes additional recommendations in this Annual Report. These recommendations seek to bring to Congress' attention provisions of the Act which merit revision.

The Commission has categorized these recommendations into seven separate areas: Simplification; Presidential Elections; Limitations and the Role of the Political Party; Commission Duties, Powers and Authority; Clarification; Corporate and Union Activity and Miscellaneous.

### Simplification

The Commission strongly believes that a simple, workable system of campaign financing regulations is achievable. Almost one-half of the Commission's recommendations seek to meet this goal. The 1974 Amendments attempted to reduce the number of reports required to be filed, but in 1976 and 1978 many candidates and committees actually were required to file more reports than previously. Implementation of the following recommendations dealing with reporting would dramatically reduce the number of reports required to be filed. Streamlining of the disclosure provisions of the Act will simplify reporting and maintain a high level of public disclosure.

#### Principal Campaign Committee Reporting

The Act requires each candidate to designate a principal campaign committee which must file reports. Since the candidate has a separate reporting obligation many campaigns file two sets of reports. The Commission recommends that candidates should be given two options: either (a) file all reports of receipts and expenditures on a candidate's report and have no committee or (b) designate a principal campaign committee which would compile and file all reports. This change often would reduce by one-half the number of reports required for some campaigns.

#### Presidential Candidates

Presidential candidates operating in two or more states should be required to file monthly in an election year and quarterly in a nonelection year, as is the case under current law. For all candidates and committees, the 10-day preelection report should be changed to a 12-day preelection report. For a Tuesday election, the tenth day before an election is a Saturday and reports received usually are not processed and microfilmed until Monday. A 12-day preelection report would be due on Thursday and would substantially increase the period during which these reports are publicly available prior to the election. (Note: appropriate adjustments will be needed in the 48-hour reporting requirements if this recommendation is adopted.)

#### Congressional Candidates

During nonelection years, all Congressional candidates and committees should file only two reports, in July and at the end of the year. There should be no dollar threshold for filing these reports. Candidates and committees involved in special elections would file 12-day preelection reports and a 30-day post special general election report.

In election years, Congressional candidates and committees should file 12-day preelection reports, a 30-day post general election report



Reporting	Number of Reports Required Two-Year Cycle	Election Year	Nonelection Year
<b>A. Current Law</b>			
Presidential Candidates	16	Monthly reports.	Same.
Candidates' Principal Campaign Committees (PCC)	24	Quarterly (if receipts or expenditures are over \$1,000), 10-day pre-election and 30-day post-election (primary and general); year-end.	Quarterly (if over \$5,000); year end.
Multicandidate Committees	12-24	Choice of: Quarterly (if over \$1,000), 10-day pre-election and 30-day post-election (all primaries and general), year-end; or monthly.	Choice of: Quarterly (if receipts or expenditures exceed \$1,000), plus pre- and post-election reports if special election involvement, or monthly.
<b>B. Recommendations</b>			
Presidential Candidates	16	Monthly reports.	Quarterly reports.
Candidates and PCCs together	9	April 10, July 10, October 10, 12-day pre-election (primary and general), 30-day post-general election, and year-end reports.	July and year-end reports.
Qualified Multicandidate Committees and National Party Committees	14-24	Monthly reports.	Choice of: monthly; or July and year-end report (plus pre- and post-election reports if involved in special elections).
Other Nonparty Committees, Independent Expenditures Filers, State and Local Party Committees	9	April 10, July 10, October 10, plus 12-day pre-election (primary and general), 30-day post-general, and year-end reports.	July and year-end.

and quarterly reports in April, July, October and year-end. This reporting scheme would be keyed to the election cycle.

If the principal campaign committee reporting recommendation suggested above is also adopted, the maximum number of reports would be reduced from 24 to nine for Congressional candidates.

#### **Qualified Multicandidate Committees and National Party Committees**

Qualified multicandidate committees and national party committees should be required to file monthly in an election year and during nonelection years should have the choice of either filing monthly or filing in July and year-end (plus pre- and post-election reports if involved in special elections).

#### **Other Filers**

Other nonparty committees, independent expenditure filers and State and local party committees should file July and year-end reports in a nonelection year and during an election year file quarterly, year-end plus 12-day pre- and 30-day post-general election reports.

#### **Candidate Support Statements (2 U.S.C. §433(b)(9))**

The Act imposes a burdensome requirement on multicandidate committees to report on their registration statements the names and offices of all the candidates they support. Any change in this information must be reported by amendment within 10 days. Some multicandidate committees are required, under this provision, to file amendments almost every 10 days. On occasion, the volume of these reports is so great that public disclosure is impaired. Most importantly, the identical information is contained on the reports of receipts and expenditures of each multicandidate committee. This provision should be repealed.

#### **48-Hour Reports (2 U.S.C. §434(a))**

The requirement that any contribution of \$1,000 or more received after the 15th day but

more than 48 hours before any election be reported within 48 hours should be eliminated.

In lieu thereof, the Act should require political committees to report within 48 hours any contribution of \$1,000 or more made by that committee to a candidate in the 15 days preceding an election. Transferring this reporting duty to the donor committee would greatly expedite the disclosure of large contributions prior to the election.

#### **Registration Statements (2 U.S.C. §433(b))**

The law requires political committees to supply information on their Statements of Organization which is not integral to the central goals of the Act. The following provisions do not add sufficient information to the concept of disclosure to warrant retention and should be repealed:

- The requirement that "the area, scope or jurisdiction of the committee" be listed.
- The requirement that the Statement of Organization contain "a statement whether the committee is a continuing one."
- The requirement that committees state "the disposition of residual funds which will be made in the event of dissolution."
- The provision requiring a "statement of the reports required to be filed by the committee with State or local officers, and, if so the names, addresses and positions of such persons."

#### **Election Period Limitations (2 U.S.C. §441a(a))**

The contribution limitations are structured on a "per-election" basis, thus necessitating dual bookkeeping or the adoption of some other method to distinguish between primary and general election contributions. The Act could be simplified by changing the contribution limitations from a "per-election" basis to an "annual" or "election cycle" basis. There is precedent in the current Act for such an approach in §441a(h). If an annual limitation is chosen, contributions made to a candidate in a year other than the calendar year in which the election is held should be considered to be made

during the election year. Thus, under present limits multicandidate committees could give up to \$10,000 and all other persons could give up to \$2,000 at any point during the election cycle. Special elections should be treated as a separate "election cycle." Furthermore, since the present limitations were established in 1974, Congress should revise these figures in light of the substantial change in the Consumer Price Index since that time.

#### **State Filing (2 U.S.C. § 439)**

The Act presently requires all candidates and committees to file a copy of each statement filed with the Commission with the Secretary of State or other equivalent State officer. It also imposes certain responsibilities on the Secretaries of State or equivalent officers. The appropriate State officials should be required to keep reports for only three years for House, five years for President and seven years for Senate, instead of the present five and 10-year requirements. The Secretaries of State have expressed more opposition to the report preservation feature of their filing responsibilities than any other. To further reduce the burdens placed on State officials, multicandidate committee reports should be filed only with the Secretary of State or other appropriate State agency in the State in which the committee is headquartered. State officials also have requested that they be reimbursed by the Federal government for costs incurred in receiving, indexing and maintaining these reports.

#### **Point of Entry (2 U.S.C. § 438(d))**

The Commission recommends that it be the sole point of entry for all disclosure documents filed by Federal candidates and committees supporting those candidates. A single point of entry would eliminate confusion about where candidates and committees must file their reports, direct their correspondence and ask questions. At present, conflicts arise when more than one office sends out materials, makes requests for additional information and answers questions relating to the interpretation of the law. A single point of entry would also reduce the govern-

mental costs now associated with the operation of three different offices. Finally, separate points of entry make it difficult for the Commission to track nonfilers and responses to compliance notices. Many responses and/or amendments may not be received by the Commission in a timely manner, even though they were sent by the candidate or committee. The delay in transmittal between two offices sometimes leads the Commission to believe that candidates and committees are not in compliance. A single point of entry would eliminate this confusion.

#### **Written Pledges (2 U.S.C. § 431(e)(2))**

Candidates and committees are required to report all written pledges even if there is no hope of collecting the money. This is mandated by the definition of contribution which includes "a written contract, promise, or agreement, whether or not legally enforceable, to make a contribution." Candidates and committees should be required to keep records of written pledge cards and other similar written instruments, but they need not be reported.

#### **Independent Expenditures by Individuals (2 U.S.C. § 434(e))**

The threshold for the reporting of independent expenditures by individuals and other persons should be increased from \$100 to \$250. The present reporting burden on persons who make relatively small amounts of independent expenditures is not consonant with the purposes of the Act. The higher amount of \$250 would appear to be a more realistic figure as to when independent expenditures begin to have an impact on election campaigns.

#### **Independent Contributions (2 U.S.C. § 434(e))**

Persons who make independent contributions in excess of \$100 are required to file reports with the Commission. An independent contribution is a contribution to a person (other than a candidate or political committee) who makes an independent expenditure. The Commission recommends that independent contributors not be required to report to the Commission.

Instead, persons who file independent expenditure reports should be required to report the sources of any contributions in excess of \$100 which is donated with a view toward bringing about an independent expenditure.

#### **Disclaimer (2 U.S.C. §435(b))**

The disclaimer required on all solicitations of contributions should be shortened to read: "A copy of our report is filed with and is available for purchase from the Federal Election Commission, Washington, D.C." The present disclaimer is redundant and reduces the amount of space or broadcast time used for advertising.

#### **Trade Associations (2 U.S.C. §441b(b)(4))**

Trade association political action committees must obtain the separate and specific approval each year of each member corporation in order to be able to solicit the corporation's executive and administrative personnel. Some trade associations have thousands of members and it is a considerable administrative burden to obtain approval to solicit every year. The one-year time limitation should be removed and the trade association should be allowed to solicit until the corporation revokes its approval.

## **Presidential Elections**

The Federal Election Campaign Act and Presidential Election Campaign Fund Act made sweeping changes in the financing of Presidential elections. Several amendments are needed to improve both of these Acts in advance of the 1980 Presidential election.

#### **Delegate Selection (2 U.S.C. §9032)**

Amendments are needed to delineate the status of delegates and delegate-candidates to Presidential nominating conventions and the applicability of the disclosure provisions and contribution and expenditure limitations to their activities. Congress should consider totally exempting from the Act financial activity in connection with delegate elections. Alternatively, Congress may wish to exempt from the

definition of contribution and expenditure: (a) the payment by a delegate of all travel and subsistence costs incurred in attending caucuses or conventions; and (b) the payment of expenditures incurred by a State or local political party in sponsoring party meetings, caucuses and conventions for the purpose of selecting delegates. Another approach would be to distinguish "authorized" delegates (i.e., persons authorized by a Presidential candidate to raise or expend funds on his behalf) from "unauthorized" candidates. Only authorized delegates would be considered contributors to the Presidential candidate and expenditures by such delegates would be charged against the Presidential candidate's limitations.

#### **Support of Presidential Nominees**

(2 U.S.C. §9003)

Congress may wish to clarify to what extent a Congressional candidate may give occasional, isolated or incidental support to the Presidential nominee of his party without such support counting as a contribution in-kind. A publicly financed Presidential campaign is prohibited from receiving any private contributions in the general election. During the 1976 elections, it was unclear under what circumstances a Congressional candidate could mention and support his political party's Presidential nominee.

The brief mention or appearance of the Presidential nominee in newspaper ads or in television or radio ads should not be considered a contribution so long as the purpose is to further the election of the congressional candidate and the appearance is at the initiative of the Congressional candidate.

#### **Compliance Funds (2 U.S.C. §9004)**

The Federal Election Campaign Act Amendments of 1976 specifically exclude from the definition of "contribution" the payment of legal and accounting services by a regular employer to insure compliance with the Federal Election Campaign Act and Chapters 95 and 96 of Title 26 of the Internal Revenue Code. The Commission's Regulations specifically permit a

Presidential campaign to set up a separate account containing private monies to be used for compliance purposes. A major party Presidential candidate receiving full public financing in the general election may not otherwise receive private contributions. In order to insure the integrity of the Presidential general election public financing provisions and to eliminate the need for any private contributions in the general election, the Presidential Election Campaign Fund Act should be amended to provide a block grant of a specified amount for legal and accounting services for each candidate and committee receiving public funds. Similar grants should be considered for candidates who receive matching funds in the primary election.

#### **Presidential Election Campaign Fund (2 U.S.C. §9006)**

Under the current provisions, the Secretary of the Treasury is required to place first priority on funds for convention financing; second priority on funds for general election financing; and third priority on the matching-payment fund. Since the primaries occur before the general election, the Secretary may not have a clear idea of the amount to reserve for the general election. The Secretary may determine that a substantial portion of the entire fund needs to be reserved for a number of possible qualified nominees in the general election, thus denying Presidential primary candidates their full entitlements. On the other hand, the Secretary may make a determination which would not reserve sufficient monies for the general election fund to pay new party candidates who qualify in the general election. Since the amount in the fund is a fixed amount in that it is limited by the number of dollars received as a result of the tax checkoff provision, the Secretary may be faced with a situation where he must risk depleting the general election fund to assure full entitlement for Presidential primary candidates. Under some circumstances, the present system could be unworkable and should be modified either to guarantee full entitlement to all qualified candidates or to eliminate all discretion by the

Secretary and the Commission in determining how to distribute partial entitlements.

#### **Repayments to the Fund (2 U.S.C. §9007)**

In its Regulations, the Commission has attempted to give candidates and committees ample leeway to challenge Commission determinations with respect to the repayment of funds to the Federal Treasury and sufficient time to gather funds to make repayments. These Regulations have generally operated fairly and equitably. However, there have been a few instances where this time period has been used to accrue interest on the amounts which the Commission has determined must be repaid to the Treasury. In order to simplify the repayment procedure the Commission recommends that all surplus funds, regardless of amount, be repaid to the Presidential Election Campaign Fund at the end of a campaign. (Any such repayment requirement should, of course, exclude payments made for tax purposes.) The statute also should be amended to require that any and all interest earned on public monies from savings accounts, government bonds, and other sources be returned to the Fund or the general fund of the Treasury. This latter requirement would insure that Presidential committees do not gain private advantage from funds which the Commission has determined must be repaid to the Fund or the general fund of the Treasury. In addition, while repayments under the Presidential Primary Matching Payment Account Act are made to the Presidential Election Campaign Fund, repayments under the Presidential Election Campaign Fund Act are made to the general fund of the Treasury. All repayments should be made to the Presidential Election Campaign Fund.

#### **Vice Presidential Candidates (2 U.S.C. §441a)**

The Act does not provide a coherent statutory framework for the treatment of Vice Presidential candidates. For example, the campaign depository of the Vice Presidential candidate is considered to be the campaign depository of the Presidential candidate. Yet, the definitions of the "candidate" and "Federal office" differentiate the Presidential candidate from the

Vice Presidential candidate. Thus, the Vice Presidential candidate is required to file disclosure reports separately from the Presidential candidate. In the Presidential general election, expenditures made on behalf of the Vice Presidential candidate are considered to be made on behalf of the Presidential candidate of the same political party and are thus subject to an expenditure limitation. These apparent contradictions should be reconciled.

## **Contributions and Expenditure Limitations and Role of the Political Party**

A systematic, comprehensive, enforceable system of contribution and expenditure limitations was implemented for the first time in the 1976 and 1978 elections. The Commission recommends the following changes in the application of these limitations:

### **Party Activity (2 U.S.C. § 441a(d))**

Political parties have a central role to play in the political system. Campaign finance legislation must be carefully drafted to bolster the role of political parties in campaign financing, while preserving the integrity of the various contribution limits. One of the major failures of campaign financing legislation in the 1976 elections was the limited role which it delegated to State and local party committees. Accordingly, the Commission recommends that:

1. State committees of a political party should be allowed to spend the greater of \$20,000 or 2 cents times the Voting Age Population on behalf of the Presidential candidate of the national party. State committees should be allowed to delegate this spending right to subordinate committees.
2. Local and subordinate committees of a State committee should be allowed to distribute campaign materials and paraphernalia normally connected with volunteer activities (such as pins, bumper stickers, handbills, pamphlets, posters and yardsigns, but not

billboards, newspapers, mass mailings, radio, television and other similar general public political advertising). These activities would be exempt from the limitations when undertaken on behalf of the Presidential candidate; would be subject to the disclosure provisions; could mention as few or as many candidates as deemed desirable; and would be financed with funds that are not earmarked for a particular candidate.

3. The \$500 exemptions for real and personal property, vendors and travel expenses which apply to candidates should be expanded to apply to political party committees (e.g., the use of real and personal property and the cost of invitations, food and beverages voluntarily provided by an individual to a political party committee should be exempted from the definition of contribution and expenditure up to \$500).
4. The statute should be amended to exempt from the definitions of contribution and expenditure payments made by or on behalf of a candidate or received by a political party committee as a condition of ballot access when these costs or payments are subsequently paid to the State. Currently, candidates make payments to State political party committees to gain access to the ballot and to defray the cost of the elections and these payments count as contributions. If these payments are in excess of \$5,000, the candidate must exceed the contribution limits to gain ballot access.

If the above-mentioned recommendations are adopted, the political parties will be given a strengthened role in the political process and volunteer activities will be encouraged. If the proposed changes are incorporated in the Act, 26 U.S.C. § 9012(f) should be repealed.

### **Expenditure Limitations (2 U.S.C. § 441a(b))**

The experience of the 1976 elections suggests that the Congress may wish to raise the Presidential spending limitations. The entitlement for Presidential candidates receiving full funding for the general election could be increased substan-

tially up to \$35 million. The increased amount should be set in cognizance of the fact that it will be increased by the Cost-of-Living Adjustment. Similarly, the \$2 million entitlement for the national nominating conventions of the political parties and the \$10 million limitation on candidates seeking nomination for President should be increased.

#### **Contribution Limitation Anomalies** (2 U.S.C. §441a(a))

When structuring an equitable balance in the application of the contribution ceilings, Congress should attempt to rectify two serious anomalies:

1. A national political party committee which is not authorized by any candidate may accept contributions of up to \$15,000 from multicandidate committees and \$20,000 from any other person. However, if the Presidential nominee of the political party designates the national committee as his principal campaign committee, then the national committee is prohibited from accepting contributions in excess of \$5,000 from all persons. Thus, the national committee of a political party is, in effect, prevented from becoming the principal campaign committee of its Presidential nominee.
2. As was noted above, an individual can give a national political party committee up to \$20,000 but a multicandidate committee can give only \$15,000.

#### **Multicandidate Committee** (2 U.S.C. §441a(a)(4))

In order to attain qualified multicandidate committee status (i.e., to be eligible to give \$5,000 per election to Federal candidates), political committees could be required to make contributions of \$100 or some other specified sum to five Federal candidates. Under the present Act, a political committee need give as little as \$1 to four candidates in order to be eligible to give \$5,000 to the fifth candidate, provided all other criteria are met.

#### **Contributions by Minors (2 U.S.C. §441a(a))**

The Act does not stipulate at what age a minor child may make contributions. Presently, the Commission is forced to rely on subjective criteria such as whether "the decision to contribute is made knowingly and voluntarily by the minor child." Contributions by minor children under the age of 16 should be considered to have been made by the parent and should be subject to the parent's \$1,000 contribution limitation -- unless the minor child's contributions aggregate \$100 or less per candidate per election or per election cycle.

### **Commission Duties, Powers and Authority**

Several provisions of the Act relating to the Commission's duties, powers and authority need to be modified or clarified.

#### **Advisory Opinions (2 U.S.C. §437f)**

Federal officeholders, candidates and political committees are allowed to request advisory opinions regarding compliance with the FECA. However, the Commission is prohibited from giving advisory opinions to other persons. Thus, several classes and groups subject to the provisions of the Act are not allowed to obtain formal guidance from the Commission on questions of interpretation. The Act should be amended to allow any person subject to the provisions of the Act to ask for an advisory opinion.

#### **Conciliation Period (2 U.S.C. §437g(a)(5))**

The enforcement provisions of the Act provide for a mandatory 30-day conciliation period. The mandatory conciliation period should be shortened to 15 days to enable the Commission to process complaints more expeditiously and also to prevent the abuse of the mandatory conciliation period for purposes of delaying enforcement action close to the election.

#### **Multiyear Authorization (2 U.S.C. §439c)**

The Commission should be given a multiyear

authorization of appropriation in order to increase its ability to engage in long-range planning and on implementation of the law. The present scheme drains valuable staff resources each year in attempts to justify an authorization and frustrates intelligent management of the agency.

#### **Number of Legislative Days (2 U.S.C. §438(c))**

The Congress should reduce the requisite 30 legislative days for the review of Regulations to 15 legislative days.

#### **Definition of Legislative Days**

(2 U.S.C. §438(c)(4))

The definition of "legislative days" should be clarified as to whether it includes only those days on which both Houses are in session or merely those days on which either House is in session.

#### **Index of Reports and Statements**

(2 U.S.C. §438(a)(6))

The requirement for the Commission to publish in the *Federal Register* a cumulative index of reports and statements filed with it should be repealed. The cost to the taxpayers to publish this index is in the thousands of dollars, with little public benefit. Alternatively, the Commission should be required to compile and maintain a cumulative index of reports and statements and publish in the *Federal Register* a notice of the existence of this index.

#### **Federal Reports Act (2 U.S.C. §437c)**

The Federal Election Campaign Act does not exempt the Commission from the requirements of the Federal Reports Act. The Commission is required to submit all forms and other similar materials requesting information from candidates and committees to the General Accounting Office for approval, thus delaying Commission efforts to improve its information retrieval systems. A major goal of the Federal Reports Act is, of course, to prevent duplicative Federal paperwork. Since, however, the Commission is granted exclusive primary jurisdiction over the Federal Election Campaign Act and no other

Federal agencies have responsibility for collecting data in this area, the Commission should be exempt from the requirements of this law. Such an exemption would facilitate Commission efforts to streamline the reporting process and expedite the simplification and development of forms and other similar materials.

#### **Judicial Review (2 U.S.C. §437h)**

The Act contains different judicial review provisions which Congress might wish to consider conforming to each other. As noted by the Court of Appeals for the District of Columbia, no apparent reason exists for different review provisions in Chapters 95 and 96 of Title 26. Congress might wish to consider making the provisions of 26 U.S.C. 9011, including the provisions for expedited review of 9011(b), apply to Chapter 96, perhaps making 9040 and 9041 identical to 9010 and 9011. Additionally, Congress might wish to address what the Supreme Court called the "jurisdictional ambiguities" resulting from Title 2 having a totally different expedited review provision (2 U.S.C. §437h) for questions of the constitutionality and construction of the statutory provisions.

## **Clarification**

#### **Principal Campaign Committees**

(2 U.S.C. §432(e))

Under the current law, the name of most principal campaign committees identifies the candidate supported. However, in some cases, it is difficult to determine which candidate a principal campaign committee supports. In such cases the committee's name does not contain the candidate's name as, for example, "Good Government Committee" or "Spirit of '76." In order to avoid confusion, the Act should require the name of the principal campaign committee to contain in its name the name of the candidate which designated the committee.

#### **Separate Segregated Funds (2 U.S.C. §441b)**

Presently many names of the separate segregated



funds do not contain the name of the sponsoring organization. Consequently, candidates and committees sometimes have great difficulty in ascertaining the source of a PAC contribution if, for example, it comes from "The Good Government Committee." In addition, the press and the public frequently cannot determine the actual source of these contributions. The Act should require a separate segregated fund to contain in its name the name of the sponsoring organization.

#### **Use of Reports (2 U.S.C. § 438(a)(4))**

An exception to the present statute should be made to allow candidates and others to obtain the names and addresses of political committees from reports and statements filed at the Commission.

#### **Candidate Petty Cash Fund (2 U.S.C. § 437b)**

The law currently requires all expenditures to be made through a designated campaign depository, except for petty cash expenses by political committees of \$100 or less. This exemption for petty cash expenses is limited to political committees, but should be expanded to permit candidates to make petty cash expenses.

## **Corporate and Union Activity**

#### **Honoraria (2 U.S.C. § 431(e)(5))**

The Act presently permits corporations and labor organizations to use general treasury money to give honoraria to Federal officeholders who may also be candidates. If the candidates are not Federal officeholders, there is no limit on the amount of the honoraria that may be received. The Commission recommends that corporations and labor organizations be prohibited from giving honoraria to Federal candidates.

#### **Registration/Get-Out-The-Vote (2 U.S.C. § 441b(b)(2))**

Congress may wish to amend the Act to allow corporations and labor organizations to conduct

nonpartisan registration and get-out-the-vote activities aimed at the general public without sponsorship of a nonpartisan organization so long as the activities are not targeted toward selected groups and so long as the activities merely urge people to register and to vote. Currently, corporations and labor organizations may only participate in such activities if they are cosponsored with and conducted by an organization which does not support or endorse candidates or political parties. The present overly restrictive provision effectively prevents corporations and labor organizations from engaging in any political activity -- such as putting up signs urging the general public to register and vote and paying for public service broadcast spots which merely urge people to vote.

## **Miscellaneous**

#### **Dual Candidacies (2 U.S.C. § 441a)**

Amendments to the law are needed to delineate the status of dual candidacies, and in particular, the applicability of the disclosure provisions and limitations on expenditures by and contributions to persons who are candidates for two Federal offices at the same time, such as:

- a) President and Senate,
- b) President and House of Representatives,
- c) House and Senate,
- d) Delegate and Congress,
- e) Federal and State or local office.

For example, if an individual is simultaneously a candidate for the Senate (where there is no expenditure limitation) and for the Presidency (where there is an expenditure limitation for those candidates accepting public funds) in the same State, are both of his or her campaigns subject to the Presidential spending ceiling for that State or may his or her senatorial campaign spend unlimited amounts of money? Also, if a candidate for Congress (who may not accept contributions in excess of \$1,000 per election -- \$5,000 for a multicandidate committee) is simultaneously an unauthorized delegate-

candidate may he or she accept contributions of \$25,000 from individuals or of unlimited amounts from other persons for the delegate-candidacy or are both campaigns subject to the Congressional ceilings?

#### **Private Benefits (2 U.S.C. § 439a)**

Prior to 1972, the law prohibited the purchase of goods or articles the proceeds of which inured to the benefit of a Federal candidate or political committee. (18 U.S.C. § 608(b), repealed by the Federal Election Campaign Act of 1971.) Currently, the Act provides that excess campaign funds may be used for any lawful purpose (2 U.S.C. § 439a). Congress should reinstate some strict controls on the conversion of political funds to personal use.

#### **Technical Amendments**

The following technical amendments are recommended to clarify the meaning of certain provisions of the Act.

#### **2 U.S.C. § 431(e)(5)**

The \$500 exceptions to the definitions of contribution and expenditure occur at the end of the paragraph in 2 U.S.C. § 431(e)(5), but occur at the end of each exception or subparagraph in 2 U.S.C. § 431(f)(4). These provisions should be made parallel by adopting the method used in 2 U.S.C. § 431(f)(4). The phrase "to the extent that the cumulative value" is used in 2 U.S.C. § 431(e)(5), but the phrase "if the cumulative value" is used in 2 U.S.C. § 431(f)(4). Under one interpretation of the above-mentioned provision, if a person exceeds the \$500 threshold only the amount in excess of \$500 must be disclosed and credited to the limits. On the other hand, in the latter provision, the full amount -- including any sums under \$500 -- must be disclosed. The phrase "to the extent that" should be substituted for "if" in 2 U.S.C. § 431(f)(4).

#### **2 U.S.C. § 432(e)**

In 2 U.S.C. § 432(e)(2), the term "political committee" should read "authorized political

committee" in order to clarify any ambiguity that might exist about which committees file with the principal campaign committee.

#### **2 U.S.C. § 433(a)**

The last sentence in 2 U.S.C. § 433(a) is no longer needed and should be stricken.

#### **2 U.S.C. § 434(b)(12)**

Two provisions of the Act, 2 U.S.C. § 434(b)(12) and § 436(c), relate to the reporting of debts and obligations. These actions should be consolidated.

#### **2 U.S.C. § 437c(f)(2)**

The language relating to the procurement of temporary and intermittent services contained in 26 U.S.C. § 9010(a) and § 9040(a) should also be placed in 2 U.S.C. § 437c(f)(2).

#### **2 U.S.C. § 455**

2 U.S.C. § 455 was improperly codified and "Title III of this Act" should be stricken each place it occurs and in lieu thereof should be inserted "chapter."

#### **26 U.S.C. § 9011(b)(1)**

The term "contrue" in 26 U.S.C. § 9011(b)(1) should be "construe."

#### **26 U.S.C. § 527(f)(3)**

The cross-reference in 26 U.S.C. § 527(f)(3) should be changed from "section 610 of Title 18" to "section 441b of Title 2."

#### **26 U.S.C. § 9002**

Chapters 95 and 96 of Title 26 of the Internal Revenue Code contain different definitions of "qualified campaign expense." Chapter 95 defines a "qualified campaign expense" to mean an expense incurred **to further** the election of a Presidential candidate to Federal office. Chapter 96 defines "qualified campaign expense" to mean an expense incurred **in connection with** a campaign for nomination to the Office of President. These provisions should be parallel in language to reflect identical meaning.

# Appendix 1

## Biographical Data on Commissioners and Statutory Officers

49

### Commissioners

**Joan D. Aikens, Chairman**  
April 30, 1981\*

Presently Chairman, Mrs. Aikens was formerly Vice President of Lew Hodges/Communications, a public relations firm located in Valley Forge, Pennsylvania. From 1972 until 1974, she was President of the Pennsylvania Council of Republican Women and served on the Board of Directors of the National Federation of Republican Women. A native of Delaware County, Pennsylvania, Mrs. Aikens has been active in a variety of volunteer organizations. She received her B.A. from Ursinus College, Collegeville, Pennsylvania. Her original appointment to the Federal Election Commission in 1975 was for a one-year term. She was reappointed for five years when the FEC was reconstituted.

**Robert O. Tiernan, Vice Chairman**  
April 30, 1981

Robert Tiernan, Vice Chairman of the Commission, served as a Democratic Member of Congress from Rhode Island for eight years, and prior to that as a State legislator for seven years. An attorney, he was born in Providence, Rhode Island, and graduated from Providence College and Catholic University Law School. Mr. Tiernan has been admitted to practice in all Federal courts, the State of Rhode Island, and the District of Columbia. He has held various national and State party positions. Originally appointed for two years, he received a five-year term upon reconstitution of the Commission.

**Thomas E. Harris**  
April 30, 1979

Mr. Harris was Commission Chairman between May 1977 and May 1978. Before serving on the Commission, he was associate general counsel to the AFL-CIO in Washington, D.C., from 1955 to 1975. He had held the same position with the CIO from 1948 until it merged with the AFL in 1955. Prior to that, he was an attorney in private practice and with various Government

agencies. A native of Little Rock and a 1932 graduate of the University of Arkansas, Mr. Harris is a 1935 graduate of Columbia University Law School, where he was on the *Law Review* and was a Kent Scholar. After graduation, he clerked one year for Supreme Court Justice Harlan F. Stone. He was originally appointed to the Commission for a four-year term and upon reconstitution received a three-year appointment.

**John W. McGarry**

Mr. McGarry served in the Navy during World War II. After the war, he graduated from Holy Cross College and earned a law degree at Georgetown Law Center. From 1959 to 1962, Commissioner McGarry was Assistant Attorney General for Massachusetts. In 1962, he was named chief counsel for the House Special Committee to Investigate Campaign Expenditures. Since 1973, he has served as special counsel on elections to the Committee on House Administration. Commissioner McGarry was appointed under the "recess appointment" clause of the U.S. Constitution on October 25, 1978.

**William L. Springer**  
April 30, 1977

Mr. Springer, an attorney by profession, served as State's Attorney of Champaign County, Illinois, from 1940 to 1942. After military service in the Navy, he returned to Champaign, Illinois, and served as County Judge from 1946 to 1950. In 1950, he was elected to the 82nd Congress and reelected to each succeeding Congress from the 22nd Congressional District of Illinois until his retirement at the close of the 92nd Congress. President Nixon appointed him a Commissioner of the Federal Power Commission in 1973. He resigned in December 1975 and was appointed to the Federal Election Commission by President Ford in 1976. Mr. Springer is a graduate of DePauw University and the University of Illinois Law School. He received LL.D. degrees from Millikin University in 1953, Lincoln College in 1966, and DePauw University in 1972.

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\* Term expiration date.

**Neil O. Staebler**

April 30, 1977

The Commission's first Vice Chairman, Neil O. Staebler was formerly chairman of the Michigan Democratic State Central Committee (1950-61), a member of the National Democratic Committee (1965-68 and 1972-75), a one-term Member of the House (1963-65) and a gubernatorial candidate in 1964 against former Governor George W. Romney. He served on President Kennedy's Commission on Campaign Financing in 1961 and was vice chairman of the 1970 Twentieth Century Task Force on Financing Congressional Campaigns. Currently the owner of a land development company, Mr. Staebler was graduated from the University of Michigan in 1926. Originally appointed to the Commission for three years in 1975, he was reappointed upon reconstitution for a one-year term.

Although Commissioner Staebler's term expired on April 30, 1977, he continued to serve actively on the Commission until the "recess appointment" of Commissioner John W. McGarry on October 25, 1978.

**Vernon W. Thomson**

April 30, 1979

Vernon Thomson, served as Chairman of the Commission between May 1976 and May 1977. He was a Republican Member of Congress from Wisconsin from 1961 to 1975. Before that, he was his State's Governor (1957-59), Attorney General (1951-56) and a member of the State legislature (1935-50). He holds a B.A. from the University of Wisconsin and is a graduate of its law school. He was originally appointed to the Commission for five years. When the Commission was reconstituted, the President reappointed him for a three-year term.

**Ex Officio Commissioners****Edmund L. Henshaw, Jr.**

Edmund L. Henshaw, an Ex Officio Member of the Commission, was elected Clerk of the House

of Representatives on December 17, 1975. Prior to that, he served as Executive Director of the Democratic National Congressional Committee, from 1972 to 1975, and as Research Director of the Democratic National Congressional Committee from 1955 to 1972. He received a B.S. degree from the University of Maryland in 1954, and attended George Washington University Law School from 1955 to 1956.

Douglas Patton, attorney, serves as Special Deputy to the Clerk of the House at the Commission.

**Joseph Stanley Kimmitt**

Stanley Kimmitt, an Ex Officio Member of the Commission, was elected Secretary of the Senate in April 1977. He previously served as Secretary of the Majority for the Senate (1966-77) and as Administrative Assistant to the Majority Leader of the Senate. A native of Great Falls, Montana, he holds a Bachelor of Science degree in political science from Utah State University. Mr. Kimmitt also attended the University of Montana and did graduate work at George Washington University. Mr. Kimmitt was inducted as a private in the U.S. Army in 1941 and retired as a colonel in 1966.

Harriet Robnett, attorney, serves as Special Deputy to the Secretary of the Senate at the Commission.

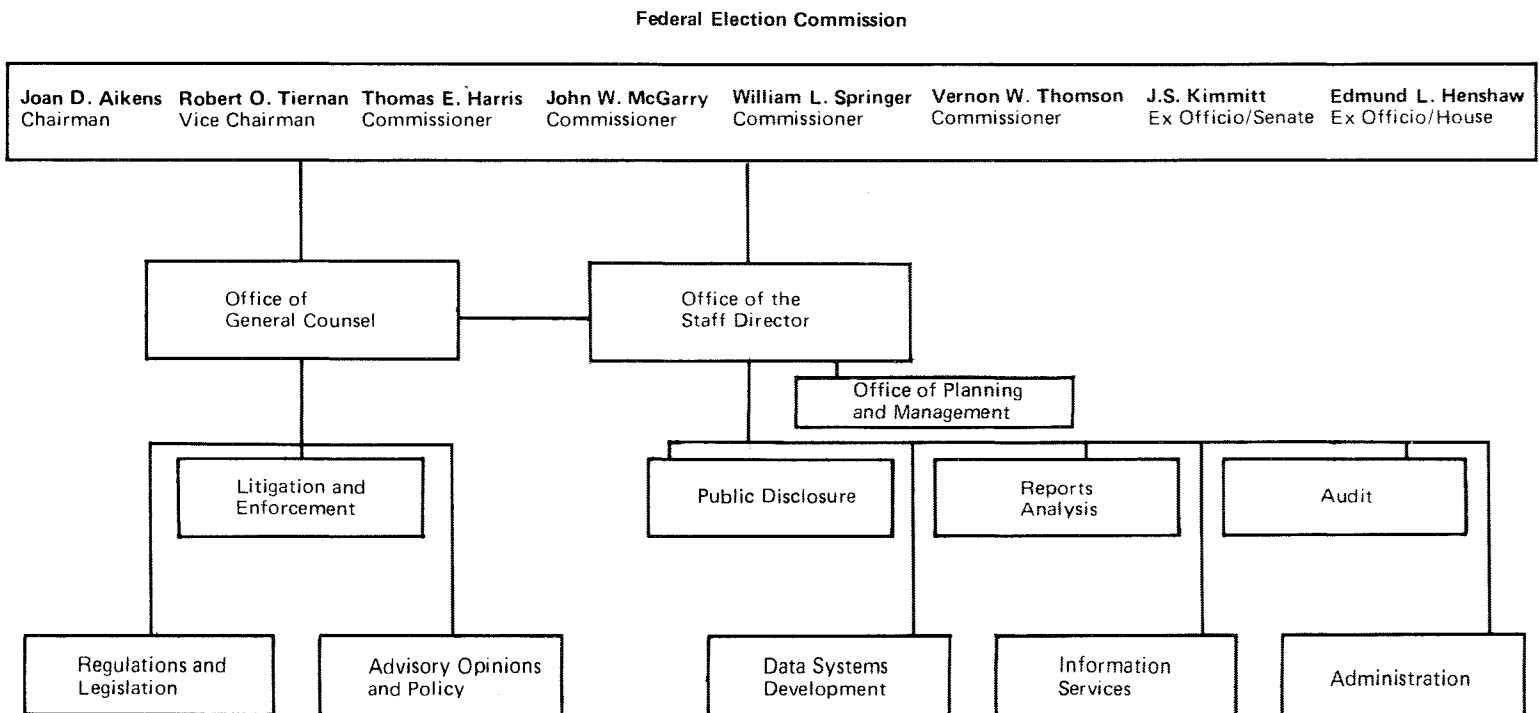
**Statutory Officers****Orlando B. Potter, Staff Director**

Before joining the Commission, Orlando Potter was consultant to the Secretary of the U.S. Senate in the administration of campaign disclosure laws. Prior to that, he was legislative assistant to U.S. Senator Claiborne Pell, and in 1968 was a candidate for the U.S. House of Representatives from New York. Mr. Potter previously was a Washington correspondent and editorial writer for the Providence (R.I.) *Journal Bulletin*. A 1950 graduate of Hamilton College,

Mr. Potter also holds a Masters Degree from Yale University. He received a Congressional Staff Fellowship from the American Political Science Association in 1970, and did graduate work in computer science at American University.

**William C. Oldaker, General Counsel**

William Oldaker began serving as General Counsel on January 1, 1977, after being Assistant General Counsel for Compliance and Litigation since 1975. Holding B.A. and J.D. degrees from the University of Iowa, he also attended the Graduate School of Business at the University of Chicago. Prior to coming to the Commission, Mr. Oldaker served with the Federal Communications Commission and the Equal Employment Opportunity Commission.



## January

- 1 — Reports Analysis Division established.
- 9 — FEC publishes the names of 1977 non-filers.
- 10 — Clearinghouse Advisory Panel meets.
- 17 — FEC releases updated survey on State Disclosure of Federal Election Campaign Reports.
- 31 — Year-end report due.

## February

- 1 — Commission publishes comprehensive *Campaign Guide for Congressional Candidates and Their Committees*.
- 6-9 — FEC releases preliminary 1977 campaign finance statistics on nonparty political committees.
- 9 — The House Appropriations Subcommittee on Treasury, Postal Service and General Government hears Commission testimony on the FEC budget request for Fiscal Year 1979.
- 17 — Commission completes revisions of FEC Form 7 (Report of Communication Costs by Corporations and Membership Organizations).

## March

- 1 — Commission sends Congress report on its 1977 activities under the Freedom of Information Act.
- 5 — FEC releases preliminary 1977 campaign finance figures for political party committees.
- 15 — Commission makes available to the public its *Index of Office Account Reports* compiled from reports filed on October 15, 1977.
- 31 — The Commission transmits to Congress and the President its Annual Report for 1977.

## April

- 3 — Repayment hearings held to allow 1976 Presidential candidate George C. Wallace to appeal a Commission determination that he must repay certain Federal matching funds to the U.S. Treasury.
- 6 — Commission approves new audit policy establishing priorities for audits to be conducted during the remainder of Fiscal Year 1978.
- 7 — FEC issues a *Federal Register* notice requesting comments on six areas of proposed Regulations concerning public financing.
- 9 — FEC releases *Reports on Financial Activity, Interim Report No. 1* on activity of party and nonparty political committees during 1977-78.
- 10 — First quarter report due.
- 15 — Report due on office account receipts and disbursements.
- 19 — *Federal Register* notice announces Commission decision to vacate certain policy pronouncements published between June 1975 and January 1977.

## Appendix 3

### Chronology of Events, 1978

55

#### May

- 18 — The Commission unanimously elects Vice Chairman Joan D. Aikens as its new Chairman and Commissioner Robert O. Tiernan as its new Vice Chairman.
- 31 — FEC publishes a notice in the *Federal Register* requesting comment on the Commission's Regulations governing the public financing of Presidential elections.

#### July

- 2 — FEC releases the results of a study on preelection financial disclosure reports by Federal primary candidates.
- 10 — Second quarter report due.
- 13 — The Commission approves its Freedom of Information Act Regulations.
- 20 — U.S. District Court of the District of Columbia renders decision in *FEC v. National Education Association, et al.*, granting the Commission's motion for a summary judgment in the case.

#### June

- 8 — FEC approves its *Rules of Procedure of the Federal Election Commission*.
- 10 — Clearinghouse for Election Administration announces completion of its 1978 *Survey of State Campaign Finance*.
- 16 — U.S. District Court of the District of Columbia renders decision in *FEC v. AFL-CIO* suit, granting the Commission's motion for a summary judgment in the case.
- 19 — FEC and the Federal Communications Commission issue a Joint Public Notice detailing examples of notices which may be used on broadcast communications to comply with both FCC and FEC requirements.
- 20 — FEC holds a public hearing on suggested revisions to Commission procedures and Regulations governing the public financing of Presidential elections.

#### August

- 14 — Clearinghouse Advisory Panel meets.
- 24 — Commission approves its proposed budget for Fiscal Year 1980.
- 28 — Commission sends notice to all candidates and committees regarding corporate and labor organization contributions.
- 31 — Commission approves guidelines for the disclosure of particulars of expenditures by non-Presidential candidates and committees.



## September

- 1 — Commission publishes *Campaign Guide for Political Committees*.
- 7 — Commission releases *Reports on Financial Activity, Interim Report No. 2* on activity of party and nonparty political committees.
- 26 — The Federal Aviation Administration changes its Regulations to permit private aircraft owners and other non-commercial operators to accept payment for transporting candidates for Federal office.
- 28 — Commission releases *Reports on Financial Activity, Interim Report No. 3* on the financial activity of Congressional candidates in 1977 and 1978.
- 28 — Pregeneral election report due.

## October

- 10 — Third quarter report due.
- 15 — Report due on office account receipts and disbursements.
- 25 — John McGarry is sworn in as a Commissioner of the FEC, replacing Neil Staebler, whose term expired on April 30, 1977.
- 28 — Preelection report of receipts and expenditures due.

## November

- 1 — Commission releases its new general information brochure, *The FEC and the Federal Campaign Finance Law*.
- 2 — Commission releases statistical study of nonparty political activity covering reporting periods from January 1, 1977, through September 30, 1978.
- 3 — *Index on Independent Expenditures* is released. Commission also releases updated statistics on Congressional candidates based on reports filed from January 1, 1977, through September 30, 1978.
- 8 — General election for U.S. House and Senate.
- 18 — U.S. District Court of the District of Columbia grants FEC's motion to dismiss the *Martin Tractor Company, et al. v. Federal Election Commission, et al.* suit.
- 22 — U.S. District Court of the District of Columbia grants FEC's motion to dismiss the *National Chamber Alliance for Politics, et al. v. Federal Election Commission, et al.* suit.

## December

- 7 — Postgeneral election report due.
- 13 — Commission completes revisions of FEC Form 3 (Report of Receipts and Expenditures) and its supporting schedules.

# Appendix 4 1978 Advisory Opinion Requests

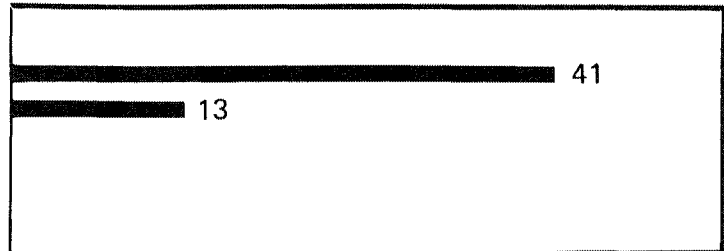
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## Category of Requester

## Number of Requests

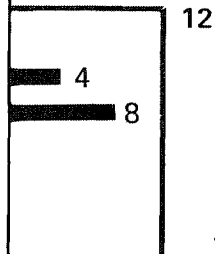
### Congressional Candidates

House  
Senate



### Party Committees

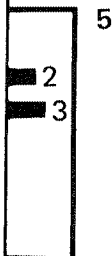
National  
State or Local



Total Advisory Opinion Requests = 107

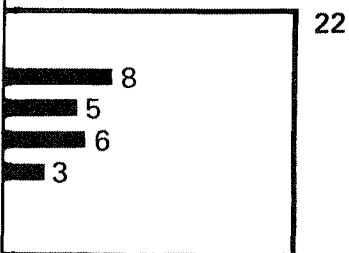
### Presidential Candidates

1976  
1980

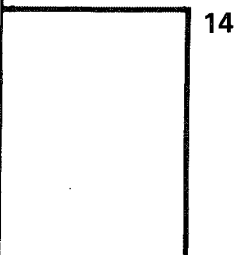


### Nonparty Committees

Corporate  
Labor  
Trade Association  
Non-441b Organizations



### Officeholders\*



\*This category is comprised of Federal officeholders (including some Congressional candidates) requesting opinions about the application of the Act to the receipt of honoraria and the use of excess campaign funds.

## Appendix 5

# FEC Advisory Opinions: Summaries

59

The following summaries of Advisory Opinions (AO's) include those issued between January 1, 1978, and December 31, 1978. Those seeking guidance for their own activity should consult the full text of an advisory opinion and not rely on the synopsis given here. Copies of the full text of AO's are available from the Office of Public Records at the Commission. (Telephone: 202/523-4148 or toll free, 800/ 424-9530)

### **AO 1976-79: Solicitation of Corporate "Members"**

Because the Articles of Incorporation of the National Right to Work Committee (NRWC), a nonprofit corporation, preclude it from having members, neither NRWC nor its separate segregated fund, the Employee Rights Campaign Committee (ERCC), may solicit contributions from individuals other than the administrative or executive personnel (and their families) of NRWC. Although ERCC stated that it believes "... it may solicit supporters of NRWC's goals as 'members'..." the Commission determined that the fact that NRWC has no members "... is dispositive of the issue raised."

### **AO 1977-2: Connected Organization**

The National Association of Electric Companies (NAEC), a trade association, is the connected organization of the Constructive Congress Committee (CCC), a political committee. The connection between NAEC and CCC was determined to exist because the following circumstances indicated that NAEC "directly or indirectly establishes, administers, or financially supports" CCC:

- A continuing pattern of CCC solicitations was directed to personnel of NAEC members;
- CCC enjoyed ready access to NAEC member personnel;
- CCC invited NAEC members to make suggestions on CCC contribution recipients; and

- CCC fundraising activity coincided with NAEC meetings.

CCC must amend its Statement of Organization to reflect the fact that NAEC is its connected organization. All solicitations by CCC must be conducted in accordance with 2 U.S.C. §441b(b)(4)(D) and Part 114 of the Commission's regulations.

### **AO 1977-18: Solicitation by Trade Association**

The Proprietary Industry Political Action Committee (PIPAC) may not solicit the Board of Directors of its sponsoring trade association, the Proprietary Association (the Association), because they are not stockholders or executive or administrative personnel of the Association. However, since the Board consists of executive and administrative personnel of the corporate members of the Association, PIPAC may solicit members of the Board under the FEC's trade association regulations (11 CFR §114.8). These regulations require that the corporate member give prior approval to a solicitation by a trade association and limit such approval to only one trade association in any calendar year. Those Board members who are employed by a corporation which has not consented to a PIPAC solicitation or which has consented to a solicitation by another trade association could not be solicited by PIPAC.

### **AO 1977-27: Congressional Intern Program**

Congressman L. A. "Skip" Bafalis may sponsor an intern program for high school students from his district without incurring any reporting obligations under the Act or regulations (2 U.S.C. §439a; 11 CFR 113.4). The donations and disbursements relating to the intern program (to cover travel and incidental expenses of the participants) are not made for the purpose of supporting the Congressman's activities as a holder of Federal office. None of the funds are under the Congressman's control at any time. The Tenth Congressional District Intern Program, a corporation organized to manage the

program, has achieved tax exempt status under Section 501(c)(3) of the Internal Revenue Code. The Commission regards AO 1977-27 as superceding those parts of AO 1977-13 (summarized in the *Record*, June 1977, p. 2) which deal with the application of the 2 U.S.C. §439a and 11 CFR 113 to the intern program described in that advisory opinion.

**AO 1977-32: Trade Association Solicitations of Municipal Corporations**

APTA-PAC is a political committee established by the American Public Transit Association (APTA), a trade association representing the urban transit industry. It must obtain specific solicitation approval from its **municipal** corporate members (as well as other corporate members) before soliciting those members' executive and administrative personnel.

**AO 1977-37: Contribution Collection Systems**

The National Education Association Political Action Committee (NEAPAC) may not use two proposed systems as alternatives to the collection of political funds through the reverse checkoff procedure. The reverse checkoff procedure is a collection system which requires an individual to make a payment to a political fund in addition to his/her union dues or fees. If the individual does not wish to contribute to the political fund, he/she must submit a written request for a refund.

System I proposed cash options which would not require that a political contribution be included with the dues payment if the individual paid his/her dues in cash. In some local affiliates, the cash option would require that the individual pay his/her dues in a lump sum (annual cash payment option). In other locals, an individual could pay his/her dues in installments. The number of installments would vary from State to State, but would in no case be less than three (installment cash payment option).

If an individual utilizes the cash payment options to avoid the reverse checkoff procedure,

he/she would lose the convenience of paying his/her dues through payroll deduction. Additionally, the annual cash payment option is not permissible in that a lump sum payment would be financially burdensome and would not provide an acceptable alternative to the use of the reverse checkoff procedure itself. A four-vote majority of the Commission did not express an opinion as to the specific use of the installment cash payment option.

System II (premembership reimbursement option) required the deduction of political funds from the paychecks of all individuals who authorized payroll deduction. However, upon a written submission, NEA would return the political funds at or before the beginning of the membership year (usually September 1), rather than after that time as under the reverse check-off procedure.

The premembership reimbursement option merely alters the timing of the reimbursement and does not relieve the unlawful aspects of the reverse checkoff procedure. Chairman Thomas Harris issued an opinion dissenting from the majority's conclusions on the premembership reimbursement system.

Neither System I nor System II adequately deals with the prohibition against soliciting nonmembers of the union, specifically agency fee payers. Thus, the proposed systems could not be utilized in any manner to solicit contributions from any person other than members of NEA or their families. 2 U.S.C. §441b(b)(4)(A)(ii).

**AO 1977-40: Contribution Limitations**

Since the Commission is still in the process of securing facts as to whether the Maryland Medical Political Action Committee (MMPAC) and the American Medical Political Action Committee (AMPAC) are affiliated, the Commission cannot issue an advisory opinion which concludes that Congressman Newton Steers' 1976 campaign may lawfully accept contributions totaling \$11,100 from these two committees. If

the Commission determines at a future date that MMPAC and AMPAC are affiliated, Congressman Steers' principal campaign committee "... will have to return the excess 1976 contributions (\$1,100) and may be determined to be in violation of the Act." The \$1,100 may be regarded by Congressman Steers as contributions to his 1978 campaign, provided the contributors give the Congressman written designations to that effect. If such designations are received, the Congressman's principal campaign committee would have to amend its past reports to disclose that the contributions are made with respect to a 1978 election.

#### **AO 1977-42: Candidate Participation in Radio Program**

Ken Hechler, a candidate for the U.S. House of Representatives, may participate as host and interviewer on two radio programs without the funding of the programs being considered a contribution or expenditure on his behalf. This conclusion was based on the following conditions:

- The broadcasts did not contain any communication expressly advocating the election of Mr. Hechler or advocate the defeat of any other candidate;
- The broadcasts did not contain any solicitation of campaign funds for Mr. Hechler; and
- The broadcasts were not conducted to influence the election of Mr. Hechler to Federal office.

The opinion expressed no opinion as to the application of the Communications Act or Federal Communications Commission rulings to the activity described.

#### **AO 1977-43: Receiving Contributions After Termination Reports**

The Glenn Brown for Congress Committee (the Committee) may not receive contributions or make expenditures after it has filed a valid Termination Report. The Committee may not be reactivated solely for the purpose of accepting a contribution designated to retire a 1976

election debt which the Committee previously owed to the candidate, but which the candidate subsequently forgave in order to permit the Committee to terminate.

#### **AO 1977-44: Solicitations by Federation of Trade Associations**

The Association of Trial Lawyers of America (ATLA), a nonprofit membership corporation comprised of individuals, may administer and solicit contributions to the Attorneys Congressional Campaign Trust (ACCT), a multicandidate committee formed in 1975. ATLA is acknowledged as the "connected organization" of ACCT.

ATLA's affiliate organizations (including branch trial lawyers organizations in four States and official affiliate trial lawyers organizations in 45 States, Puerto Rico and the District of Columbia) are considered trade associations and ATLA is considered a federation of trade associations. Consequently, ATLA and its affiliates may either engage in a joint solicitation of the members of ATLA's affiliated associations, or the affiliated associations may delegate their solicitation rights to ATLA. Moreover, a local organization affiliated with a State affiliate is considered a "local affiliate" of ATLA. Members of these local affiliates are thus within the permissible class of solicitees of the national organization, ATLA. The State affiliates may also solicit members of the local affiliates.

Contributions received by ACCT as a result of improper solicitation of persons who were **not** members of either ATLA or its affiliates are required to be returned to the donors or utilized in a lawful manner which does not constitute a "contribution" or an "expenditure" under the Act. Unsolicited contributions from nonmembers, however, if otherwise lawful under the act, may be accepted by ACCT.

The advisory opinion explicitly declined to state any conclusion with respect to the legality of past solicitations by ACCT, ATLA or any of its branches or affiliates.

**AO 1977-49: Solicitations by Corporate Political Action Committee**

Kerr-McGee Corporation (Kerr-McGee) or its political action committee (K-MPAC) may use a bank as custodian in connection with a twice-yearly solicitation of its employees, even though the bank holds Kerr-McGee stock as a fiduciary, provided the bank preserves the anonymity of contributors (and those not contributing) in accordance with 11 CFR 114.6(d). Such a bank may also be used as an independent mailing service for purposes of the twice-yearly solicitations.

Kerr-McGee is required to make the names of its stockholders available to a labor organization (or an independent mailing service) in accordance with 2 U.S.C. §441b and 11 CFR 114.6(a), **only** if it or K-MPAC solicits employees or stockholders under the twice-yearly solicitation provisions of the Act.

Kerr-McGee must bear the cost of preparing a list of stockholders or employees (and their addresses) for an independent mailing service, if it does not wish to disclose these names to a labor organization requesting them under 11 CFR 114.6(e). However, the cost of producing labels for the labor organization's mailing, or other similar expenses (such as the preparation and actual mailing of the labor organization's solicitation) must be borne by the labor organization itself.

Under the twice-yearly solicitation provisions, Kerr-McGee must make available to a labor organization the names and addresses of **all** stockholders and employees, "... regardless of the corporation's decision to refrain from soliciting those persons on the list who may be foreign nationals. . . ."

Kerr-McGee may not use its twice-yearly solicitation materials for any purpose other than soliciting contributions. It may, however, quote pertinent excerpts from the Act and regulations or from advisory opinions issued by the Commission.

Two other questions contained in the advisory opinion request were "... not posed in a specific factual context and therefore an advisory opinion responding to them (was) not appropriate." The opinion did, however, cite several relevant sections of the Commission's regulations.

The Commission was unable to answer by the required four-vote majority one of the questions posed by Kerr-McGee concerning the solicitation, as stockholders, of employees participating in the corporation's Employee Stock Ownership Plan (ESOP). A separate statement of opinion concerning this issue was released jointly by Vice Chairman Joan D. Aikens, Commissioner Vernon W. Thomson and Commissioner William L. Springer.

**AO 1977-52: Retiring 1974 and 1976 Debts; Transfer of Debts**

Hess Dyas' 1974 campaign committee (for the House of Representatives) and his 1976 committee (for the Senate) may transfer their debts and obligations to Dyas' 1978 campaign committee (for the House). The 1974 and 1976 committees may then terminate, passing on their reporting obligations for the 1974 and 1976 debts to the 1978 campaign committee. That committee would be required to itemize the 1974 and 1976 (primary election) debts, and contributions designated to retire those debts, separately on Form 3, Schedules A and C.

The 1978 campaign committee may use contributions to retire the 1974 and 1976 debts only if contributors are informed that their contributions will be used in this manner and if the contributions are expressly earmarked for that purpose (for example, by notation on a check). Contributions designated and used to retire the 1974 debt are not limited since no contribution limits applied to that election.

On the other hand, contributions designated to retire the 1976 campaign debts are subject to the 1976 limits. Persons may designate contributions to retire the 1976 debt only to the extent

they have not previously "used up" their limits applicable to the Senate primary election in 1976.

The Commission declined to state an opinion on whether the Dyas committee could use excess campaign funds from the 1978 campaign to retire the 1974 and 1976 debts since the question was hypothetical.

#### **AO 1977-53: Activity by Foreign-Based Trade Association**

The Asia-Pacific Council of American Chambers of Commerce (APCAC) may not establish a political committee to support Federal candidates because it is considered a "foreign national." The Act expressly prohibits a foreign national from making any contributions in connection with a Federal election. 2 U.S.C. §441e. APCAC is deemed to be a foreign national because:

- A "foreign national" includes an association or organization whose place of business is in a foreign country (22 U.S.C. §611(b));
- APCAC is comprised of member American Chambers of Commerce or American business groups (AMCHAM's) located in and having their principal place of business in ten countries; and
- APCAC's budget is provided by its member foreign principals.

Since the statutory prohibition against election-connected contributions by foreign national is unqualified, APCAC and the member organizations providing its budget may not establish a "separate segregated fund," as defined in 2 U.S.C. §441b(b)(2)(C).

#### **AO 1977-54: Candidate Participation in Petition Drive**

Newt Gingrich, candidate for the U.S. House of Representatives, may participate as chairman of a petition drive in Georgia (to stop ratification of the Panama Canal Treaties) without expenses incurred in connection with this drive being considered contributions to or expenditures on

behalf of his campaign for Federal office provided certain conditions are met. Expenses for newsletters, mass mailings, newspaper, radio and television advertising and public appearances where Mr. Gingrich is identified as chairman of the drive will not be contributions provided:

- Such activities do not involve the solicitation, acceptance or making of contributions to Mr. Gingrich's campaign; and
- Such activities do not involve any communication which advocates Mr. Gingrich's nomination or election to Federal office or the defeat of any other candidate for Federal office.

#### **AO 1977-56: Preserving Anonymity for Contributors to Separate Segregated Funds**

The custodian of employees' contributions solicited (under the twice-yearly provisions of 2 U.S.C. §441b) by SAFEPAAC, the political action committee of the Western Company of North America, may also be the treasurer of SAFEPAAC provided he/she preserves the anonymity of contributors and files the required reports. A custodian who serves as treasurer is subject to all the responsibilities of a treasurer under the Act and may not participate in the decision-making processing whereby the separate segregated fund makes contributions and expenditures. The custodian-treasurer may not disclose to a company accountant or an outside auditing firm the records of persons making a single contribution of \$50 or less or multiple contributions aggregating \$100 or less in a calendar year. The custodian-treasurer could, however, disclose to either a company accountant or outside auditing firm those records required with respect to single contributions exceeding \$50 in a calendar year or contributions from an individual which aggregate over \$100 in a calendar year.

#### **AO 1977-57: Termination of 1972 Committee**

The 1972 Campaign Liquidation Trust (the Trust) may not terminate its reporting obliga-

tions under the Act. Because the Trust has assumed the debts and obligations of former Federal campaign committees, and because these debts and obligations have not been extinguished, the Trust must continue to report (2 U.S.C. §434(b)(12)).

However, some of the debts and obligations currently reported by the Trust are claims for legal fees made against the entities which established the Trust. The Trust may disallow these claims, in which case the Trust need not report them as debts or obligations. When a previously reported claim is disallowed, however, the Trust must file an amended report to reflect that the claim is no longer a debt or obligation. The Trust's reporting obligation may be terminated once all debts and obligations have been extinguished.

**AO 1977-58: Transfer of Candidate's Personal Funds**

Personal funds transferred by 1974 candidate Edward P. Beard to his principal campaign committee may not be retroactively designated as a loan to the committee. Since the funds were originally reported by the committee as a transfer-in (contribution), no debt or obligation was disclosed. The committee, in fact, completed its activities following the 1974 elections with no reported debts or obligations. Subsequent contributions received and expenditures made by the committee were with respect to Mr. Beard's candidacy in 1976. To redesignate a transfer from 1974 as a debt or obligation of the committee would not be in accordance with the Act (2 U.S.C. §434(b)(12)), which requires debts to be disclosed in a timely manner and to be continuously reported until they are extinguished.

**AO 1977-59: Assistant Treasurer May Assume Treasurer's Duties**

The treasurer of AICPA Effective Legislation Committee (the Committee) may designate an assistant treasurer to serve in his absence provided the Committee first files an amendment to its Statement of Organization identifying the

assistant treasurer. In this case, the assistant treasurer may assume all the duties and responsibilities of the treasurer, including the duty to sign required reports.

**AO 1977-61: Joint Fundraising**

The Colorado State Democratic Central Committee (CDC) may engage in joint fundraising with the People for Haskell committee (PH) by means of a fundraising dinner sponsored by a third political committee authorized by both CDC and PH.

This political committee, Dinner with the Vice President Committee (DVPC), may conduct the fundraising event, provided certain additional requirements detailed by the Commission are met, including:

- Written authorization of DVPC must be made by CDC and PH.
- All committees must comply with the Act's provisions: recordkeeping, reporting and contribution limitations, among others.
- A procedure must be established whereby contributors may designate their contributions to one (or the other) of the two committees. All other contributions will be equally divided between PH and CDC, as agreed prior to the event.
- Solicitations must inform contributors of the procedures for making contributions to the committee, including a description of the method for directing contributions to one of the other two committees.
- Expenses must be shared in the same ratio as the allocation of contributions received. If not, the committee paying a disproportionate share of expenses is considered to have made an in-kind contribution to the other committee.

The Commission also provided detailed guidance to the three committees on procedures for reporting the contributions received, as well as for reporting the transfer of funds from DVPC to CDC and PH.



**AO 1977-63: Use of Excess  
Campaign Funds**

Congressman Paul G. Rogers may use excess campaign funds from a 1968 congressional campaign for his campaign for reelection in 1978. The 1968 funds, if used in the 1978 campaign, must be included in the cash-on-hand of Congressman Rogers' 1978 principal campaign committee. The committee must also identify any individual contributor of more than \$100 on a separate Schedule A, specifically designated for this purpose. These individuals are not considered to have made a contribution for limitation purposes under the Act, but they must be identified for disclosure purposes.

The excess campaign funds may also be used for other purposes described in the Act and regulations at 2 U.S.C. §439a and 11 CFR 113.2, respectively.

**AO 1977-64: Use of Excess  
Campaign Funds**

The distribution of excess campaign funds by Margaret Costanza, former candidate for Congress, to the American Cancer Society and Camp Haccamo is expressly made lawful by 2 U.S.C. §439a, if those organizations are qualified charities under 26 U.S.C. §170(c).

**AO 1977-65: Transfer of Funds  
from Connected Organization**

The political committee Americans for Democratic Action/Progressive Victory Fund (ADA-PVF) may not accept contributions from its connected organization, Americans for Democratic Action-Michigan Chapter (ADA-MC). Because ADA-MC derives a portion of its funds from the sale of advertising or fundraising tickets to corporations and labor organizations, contributions by ADA-MC to ADA-PVF would constitute prohibited indirect corporate or labor contributions to a political committee. As ADA-PVF acknowledged that it had already received such contributions from ADA-MC, the Commission required that the monies be returned. ADA-PVF must also give the Commission written notice when the funds have been returned.

**AO 1977-66: Use of Committee's  
List of Contributors**

The Title Industry Political Action Committee (TIPAC), a multicandidate committee, may use a list of 1977 contributors to TIPAC for its 1978 solicitation campaign. Even though the list duplicates information submitted on TIPAC's reports to the Commission, the list was compiled by TIPAC from its own information. Moreover, TIPAC's use of its own contributor list for its own solicitation program by its own agents (a committee of State advisory trustees) does not involve the kind of "commercial purpose" prohibited in 2 U.S.C. §438(a)(4).

**AO 1977-67: Solicitation of "Members"**

The Public Service Research Council (PSRC) and its political action committee (PAPAC) may solicit contributions from certain persons PSRC claims as its members if they satisfy four conditions defined by PSRC and two additional criteria established by the Commission. Under the conditions defined by PSRC, the member must have:

- Expressed "a specific and unambiguous desire to become, or join as, a member of PSRC" by writing to PSRC or returning a card expressing that desire;
- Been given the right to participate in a membership survey at least once a year;
- Paid dues or contributions to PSRC on a regular basis; **and**
- Renewed membership status in PSRC at periodic intervals.

The opinion concluded that these four conditions are "sufficient indicia of a membership relationship" to permit solicitation by PSPAC **provided two additional conditions are met:**

1. Dues or contributions must be set at a predetermined amount; and
2. Any waiver of dues or contributions must be made in accordance with predetermined criteria.

The opinion does not address the possibility of soliciting other persons also considered by PSRC to be members (but who do not meet all of the above criteria); nor does the opinion address the issue of membership status for any person whose dues or contributions have been waived.

**AO 1977-68: Federal Candidate May Be Employed by Bank**

Peter Cooke, a Federal candidate, may fulfill the terms of his employment contract with Tracy Collins Bank and Trust (the Bank) without the compensation being regarded as a contribution or expenditure, provided that "... a bona fide employment relation exists between the parties for purposes genuinely independent of Mr. Cooke's candidacy and that any compensation paid by the Bank to Mr. Cooke is exclusively in consideration of services performed by him as the Bank's legislative lobbyist." Mr. Cooke's contract states, among other provisions, that he will: devote a minimum of 40 hours a week to serving as legislative lobbyist for the bank; not count, as part of his minimum work week, time spent in connection with personal political activity; keep available for Bank inspection a log of political campaign-related phone calls made from Cooke's office at the Bank; and promptly reimburse the Bank for the cost, including added overhead, of any "occasional, isolated or incidental" use of Bank facilities in connection with personal political activity.

**AO 1977-70: Corporate Solicitation of Licensees**

The McDonald's Corporation (the Corporation) or its political action committee may solicit contributions from the executive and administrative personnel of McDonald's incorporated licensees. Because of the Corporation's "... continuing control and direction over the business policies, practices and procedures of its licensees, as well as the nature and extent of the licensees' contractual obligation to the Corporation..." the licensees are considered to be affiliates of the Corporation. All separate segregated funds established by licensees are subject to the anti-proliferation provisions of the

Act and the Commission's regulations (11 CFR 110.3) and would share contribution limits with McDonald's PAC.

**AO 1977-71: Solicitation by Trade Association**

The American Institute for Shippers' Association, Inc. (AISA), upon receipt of solicitation permission (11 CFR 114.8(d)) by member cooperatives, may solicit the executive and administrative personnel of management corporations retained by these member cooperatives. Because the management corporations are formed for the specific purpose of fulfilling the executive and administrative functions of the member cooperatives of AISA and because they do not engage in any other activity, the executive and administrative personnel of the management corporation may be regarded as the executive and administrative personnel of the member cooperatives of AISA.

**AO 1978-1: Retirement of Past Campaign Debts**

Contributions to the Democratic National Committee (DNC) to retire debts incurred in connection with elections held prior to January 1, 1975, are not subject to the contribution limits of the Act.

The conditions for acceptance of such unlimited contributions set forth in the opinion were originally stated in several 1975 and 1976 advisory opinions and also codified in the Commission's regulations at 11 CFR 110.1(g). The contributions, however, must be clearly designated and used only for that purpose. Any solicitation for such contributions must contain a clear notice that the contributions will be used to retire a pre-1975 debt.

The DNC must also maintain a separate account to receive such contributions and to make expenditures to retire the pre-1975 debts. Transfers between this account and other DNC accounts are prohibited. The DNC must keep records for and report all contributions and expenditures in connection with the retire-

ment of the pre-1975 debts in accordance with the currently applicable provisions of the Act and regulations. This includes reporting the outstanding obligations on a separately designated Schedule C and, when itemization is required, reporting each contribution designated for the pre-1975 debt on separately designated Schedule A's.

#### **AO 1978-2: Expenditure by Political Campaign Committee**

The principal campaign committee of Congressman Butler Derrick may pay the expenses incurred by the Congressman and his wife when attending the Democratic National Committee's "Southern Salute to Jimmy Carter." In past opinions, the Commission has stated that it leaves to the candidates (or their committees) the discretion of deciding which expenditures will best serve their candidacies. The expenditure must, of course, be reported in accordance with the applicable provisions of the Act and regulations.

#### **AO 1978-3: Reimbursement by Principal Campaign Committee**

The principal campaign committee of Congressman Gillespie V. Montgomery may reimburse him for the purchase of Christmas gifts in 1977. The Congressman considers the cost of the gifts to be legitimate campaign expenditures. The principal campaign committees must report the reimbursement as an expenditure to the person or business from whom the Congressman purchased the Christmas gifts. The report must also note that the actual disbursement of funds was made to the Congressman. Mr. Montgomery must provide the committee with a receipted bill from the vendor in accordance with 2 U.S.C. §432(d) and 11 CFR 102.9(c). The Commission expressed no opinion as to the applicability of House Rules to the proposed reimbursement, because these Rules are outside the Commission's jurisdiction.

#### **AO 1978-4: Commemorative Committee**

The John Rhodes Commemorative Committee is not required to register and report as a political

committee for a commemorative dinner held to honor Congressman John Rhodes for the following reasons:

- The dinner is a nonprofit, nonpartisan event; and
- The event is not for the purpose of influencing Mr. Rhodes' nomination or election to Federal office.

The dinner is considered a bona fide testimonial event provided that no political contributions are solicited, made or received in conjunction with the event and that no communication is made to the attendees as a group which advocates the election of Mr. Rhodes or the defeat of any other candidate.

#### **AO 1978-5: Payment of Candidate's Living Expenses**

Herbert Creech, candidate for the U.S. House of Representatives, may use campaign funds to pay for his ordinary and necessary living expenses during his campaign for Federal office. The Commission has held in several past advisory opinions that candidates and their committees "... have wide discretion under the Act in deciding which expenditures will best serve their candidacies." Expenditures for such living expenses paid out of a campaign account would, of course, be reportable under the Act. The Commission has no jurisdiction over possible tax ramifications of such expenditures.

#### **AO 1978-6: Payment of Compensation to Candidate**

Norman G. Gaar, candidate for the U.S. Senate, may continue to receive compensation from his law firm without such compensation being considered a contribution provided:

- A bona fide employment relation exists between Mr. Gaar and the law firm;
- Compensation paid to Mr. Gaar is "exclusively in consideration of employment services performed by him"; and
- Compensation is paid to Mr. Gaar "... according to the same compensation scheme follow-

ed by (Mr. Gaar) and the firm prior to the onset of (his) candidate status.”

For instance, the number of law firm hours worked is apparently a factor in fixing Mr. Gaar’s compensation. A contribution by the firm will not occur unless his compensation is not decreased to reflect any decrease in the number of hours worked for the firm because of his campaign. Such a contribution would be subject to limitations and must be reported in accordance with the Act and regulations.

#### **AO 1978-7: Contribution from an Estate**

The Jim Guy Tucker for Senate Campaign Committee must report the portion of a partnership contribution allocable to two decedents’ estates as “. . . contributions from the living beneficiaries of those estates according to their interest in the estate under relevant testamentary and trust instruments.” The contributions may be allocated in this manner only if such beneficiaries can make a “knowing and voluntary decision to contribute” and the contribution is otherwise legal under the Act. In the alternative, the contribution may be allocated by the partnership among only the living partners in accordance with the Commission’s regulations at 11 CFR 110.1(e).

#### **AO 1978-9: Activities of Party Organization**

For purposes of the contribution limitations, the Republican State Central Committee of Iowa (State Committee) is a separate political committee from the various county central committees (County Committees) in the State which qualify as “political committees” under the Act and regulations. The conclusion is based on the facts submitted by the State Committee that:

- Contributions by the County Committees to candidates for Federal office are “not made in cooperation, consultation, or concert with, or at the request or suggestion of, the State Committee. . .”;

- The County Committees receive no funds (other than proceeds of joint fundraising) from the State Committee;
- The County Committees are created by statute and not established, financed, maintained or controlled by the State Committee; and
- Each County Committee elects its own officers and adopts its own constitution and bylaws.

Therefore, because they are separate political committees, contributions to or by the State Committee and the County Committees are not aggregated under one contribution limitation.

The party’s auxiliary bodies (e.g., Federation of Republican Women, Young Republicans, College Republicans), which are “political committees” as defined by the Act, are not, however, considered separate committees for purposes of the contribution limitations. Provisions in the State statutes and State Committee’s bylaws provide for the establishment of these auxiliary bodies. They also coordinate their activities and finances with the State Committee. Therefore, contributions by the auxiliary bodies are subject to the limitations which govern State Committee activity.

County committees or auxiliary bodies which are not “political committees” as defined in the Act, may make contributions up to \$1,000 in a calendar year to candidates for Federal office without incurring any obligation to register or report. Any such contributions must be lawful under the Act. In this case, however, because the party units are not “political committees,” contributions to or by the party units do not count against the limitations of or need be reported by the State Committee. The State Committee’s limitations **would** apply and a reporting obligation **would** occur only if:

- The party unit becomes a “political committee” which is established, financed, maintained or controlled by the State Committee; or

- The unit is a fundraising agent for the State Committee.

The Act's provision for a special party expenditure limitation (2 U.S.C. §441a(d)) gives only one shared limitation to the entire State party organization. Thus, individual party units (such as county committees or auxiliary bodies) do not each have a limit separate from the State Committee. The regulations set out alternative methods for the administration of this single State party limitation and the requirements for reporting this activity.

The special \$1,000 coordinated spending limitation for party committees (11 CFR 110.7(b)(5)) is available for use only in connection with the general election for Presidential candidates. Therefore, it may not be used in connection with the 1978 general election.

Under certain conditions, the Act exempts from the definition of contribution and expenditure the costs of a slate card, sample ballot or "other printed listing" prepared by a party committee. The slate cards may include information identifying candidates by name, office or position currently held, office sought and party affiliation. They may also include certain other voting information. Pictures of the candidates may be used for identification purposes.

However, additional biographical information or material on the candidates' or party's philosophy or positions on issues is not permissible.

Materials which qualify under this provision may be distributed in direct mass mailings.

#### **AO 1978-10 (Part A): Allocation of Party Expenses**

The Republican State Committee of Kansas (the Committee) should allocate expenses of registration and get-out-the-vote drives between Federal and non-Federal elections in the same manner as other general party expenditures (11 CFR 106.1(c) & (e)). The portion of the expenses allocable to Federal candidates must be paid

from funds contributed in accordance with the Act. Those costs which are allocated to non-Federal elections may be paid out of funds contributed in accordance with Kansas State law, including, if applicable, funds contributed by corporations or labor organizations. **NOTE: This conclusion modifies and supercedes the Commission's responses to Advisory Opinion Requests 1976-72 and 1976-83.**

Expenditures made for the Committee's drives need not be considered contributions to a particular candidate for Federal office unless the drives are made specifically on behalf of such candidate.

The Committee may use printed materials (such as slate cards or sample ballots) in connection with the drives which identify candidates for Federal office. The costs of such materials would not be considered contributions or have to be allocated to candidates provided the materials were prepared in accordance with the slate card or sample ballot exemption in the Act (2 U.S.C. §431(e)(5)(E) and §431(f)(4)(G)).

#### **AO 1978-12: Multicandidate Committee**

Friends of Congressman Henry A. Waxman (the Committee), political committee, may operate as a multicandidate committee for purposes of the contribution limits, provided:

- The Committee qualifies as a multicandidate committee under the Act (2 U.S.C. §441a(a)(4)); and
- Congressman Waxman does not authorize the Committee in writing to solicit or receive contributions on his behalf.

Even though Congressman Waxman will assist in fundraising efforts for the Committee and will participate in the selection of candidates to receive contributions, if the two conditions above are met, the Committee "...will not be considered one of (Congressman Waxman's) authorized committees, and contributors to the Committee will not be regarded as making

contributions with respect to Congressman Waxman's 1978 House campaign." Once qualified as a multicandidate committee, the Committee may make contributions up to \$5,000 per candidate, per election.

**AO 1978-13: Payment of Expenses  
in Connection With  
Separate Segregated Fund**

Corporate members of the Aluminum Association (the Association) may not pay the travel expenses of five representatives of member corporations who traveled to Washington, D.C. to formally organize and establish the Association's separate segregated fund (AAPAC). Such expenses would constitute "establishment" and "administration" costs which must be paid by the Association. Any payment by a member corporation would constitute a prohibited corporate contribution to AAPAC.

However, when other AAPAC meetings, occurring after the initial organization meeting, coincide with regular Association meetings, and the costs incurred in connection with the AAPAC meeting are incidental to the expenses of attending the Association meeting, the member corporations may pay those incidental expenses without being considered to have made a prohibited contribution. These incidental expenses include the travel expenses of the corporate-member representatives attending both the Association and AAPAC meetings.

**AO 1978-15: Candidate Participation  
in Charity Drive**

Vic Fazio, a candidate for the U.S. House of Representatives, may participate as Honorary Chairman in a fundraising campaign for the Sacramento unit of the American Cancer Society.

The costs of the publicity and brochures used in connection with the drive would not be considered a contribution to or an expenditure on behalf of Mr. Fazio's candidacy because the major purpose of the drive is not to influence the nomination or election of a candidate to Federal office and, additionally, because:

- Mr. Fazio agreed to participate as chairman before he became a candidate for Federal office;
- Mr. Fazio "...presumably will not control or have any role in deciding the distribution to be made of brochures and letters bearing his picture and name";
- The brochures and letters will not contain any reference to Mr. Fazio's candidacy for Federal office.

Commission approval of the opinion was also conditioned on an assumption that all other activities in connection with the drive will not involve solicitation or acceptance of contributions in connection with Mr. Fazio's campaign or communications expressly advocating his election (or the defeat of any other candidate).

**AO 1976-16: Payroll Deduction Program**

The Whirlpool Corporation's political action committee (WPAC) may use an open-ended payroll deduction program for its executive and administrative personnel to make contributions to WPAC. The employee's signed authorization will not, in itself, be considered a contribution because:

1. The authorization may be terminated at any time; and
2. No certain total amount may be identified.

The authorization does not constitute a contract, promise or agreement (2 U.S.C. §431(e)(2); 11 CFR 100.4(a)(3)). Thus, it is not reported as a debt owed to WPAC. WPAC must, however, disclose (on FEC Form 3) each contribution made when the payroll deduction is actually made and the proceeds are remitted to WPAC. Contributions from one donor aggregating in excess of \$100 during a calendar year must be itemized.

The Commission noted, however, that authorization of a payroll deduction to a committee would constitute a contribution if the executive or administrative employee making the authori-

zation "...specified...that it would be effective over a definite period of time..." The committee's obligation to itemize such a contribution on its report would arise from the authorization itself if the total amount of the promised contribution (by itself or when aggregated with other contributions by the same donor) exceeded \$100 during a calendar year.

**AO 1978-17: Solicitations by  
Trade Association**

The National Cable Television Association (NCTA) may conduct solicitations for its separate segregated fund (CABLEPAC) on the exhibit floor at its annual convention provided certain conditions are met. NCTA may set up a booth for the purpose of selling T-shirts, caps and buttons to raise funds for CABLEPAC provided that:

- Only persons who may be properly solicited by NCTA under the Act and Commission's regulations (2 U.S.C. §441b, 11 CFR 114.8) will purchase the items in the booth, thus making a contribution to CABLEPAC;
- Existence of the booth will not be publicized prior to or during the convention;
- Signs will be posted on the booth itself to inform potential contributors of the restrictions on who may contribute;
- Funds from persons who are employed by nonmember corporations of NCTA or by member corporations who have not given the requisite approval will not be accepted;
- CABLEPAC maintains records of each purchase including the amount and type of purchase and the company affiliation of each purchaser.

At the same convention, NCTA may orally seek to obtain permission for solicitations from member corporations who have not given such permission, provided "...the actual request for approval is made in writing" in accordance with the Commission's regulations at 11 CFR 114.8(d)(3).

Approval to conduct solicitations must also be made in writing before such solicitations may be made.

**AO 1977-18: Distribution of Publication  
to Members of Congress**

The Chamber of Commerce may distribute a single copy of its publication "How They Voted" to each Member of Congress. Because the publication will be distributed to all Members, without regard to their status as a candidate for Federal office, and because the limited distribution shows "...no evident purpose to influence Federal elections...", the costs of the publication will not constitute a prohibited use of corporate treasury funds (2 U.S.C. §441b). The distribution of the publication to other nonmembers of the Chamber, however, would constitute an unlawful use of corporate funds since the publication was financed from the treasury funds of the Chamber.

**AO 1978-19: Contributions to  
Two Committees for  
the Same Candidate**

Congressman Donald Fraser may regard contributions to the Minnesota Fraser Committee (Senate 1) as separate and distinct from contributions made to the Fraser Senate Committee (Senate 2). The Senate 1 committee supported the Congressman's campaign for the U.S. Senate for the term ending in 1984, while the Senate 2 committee is currently supporting the Congressman's campaign for the U.S. Senate for the term ending in 1982. The election for both the 1982 and 1984 Senate seats will be held in November 1978.

Because the Senate 1 committee is now terminated and because its efforts were for a separate Federal office, contributions to it "need not be aggregated with those made to the 'new' Senate 2 committee..." Contributions to the two committees would have to be aggregated only if contributions made to the Senate 1 committee were transferred, directly or indirectly, to the Senate 2 committee under 2 U.S.C. §441a(a)(5)(C). Such contributions transferred from the

Senate 1 committee would have to be attributed to the original donors, and aggregated for purposes of determining the \$100 disclosure threshold and for contribution limitation purposes.

**AO 1978-20: Use of  
Corporate Aircraft**

Robert Davis, candidate for the U.S. House of Representatives, may use an aircraft owned by a nonprofit corporate flying club for campaign-related travel provided he reimburse the flying club in advance in accordance with §114.9(e) of the Commission's regulations. An individual member of the club may use the club's aircraft in connection with campaign-related travel as a volunteer "providing personal services to the campaign." However, the member of the campaign committee would have to reimburse the flying club in accordance with §114.9(e).

If made by the club member, the total reimbursement could not exceed the combined total limits contained in 2 U.S.C. §431(e)(5)(1) (travel expenses of individual volunteering services to campaign exempted from definition of contribution) and 2 U.S.C. §441a (individual contribution limitations).

The opinion noted the possible application of other laws or regulations outside the Commission's jurisdiction, particularly regulations of the Federal Aviation Administration.

**AO 1978-21: Separate Segregated Fund of  
Foreign-Owned Corporation**

The Budd Company (the Company) may continue to administer its separate segregated fund (the Committee) after becoming a wholly-owned subsidiary of Thyssen, A.G., a West German corporation. Because the Company will retain its autonomous corporate form (as a Pennsylvania corporation) and its principal place of business will remain in the United States, the Company will not be considered a "foreign national" which, under the Act, is prohibited from making contributions in connection with Federal elections (2 U.S.C. §441e; 11 CFR 110.4(a)).

The conclusion was based on several assumptions:

- Contributions to the Committee are not solicited or accepted from foreign nationals;
- Solicitations for the Committee and contributions or expenditures made by the Committee are in accordance with the Act and regulations;
- Individuals exercising decision-making authority in the Committee are citizens of the United States (or, lawfully admitted for permanent residence);
- Decisions made by those individuals are not "dictated or directed by personnel of Thyssen, A.G. or any other foreign corporation, who are foreign nationals."

**AO 1978-22: Hospitality Suite Maintained  
by Candidate**

The cost of maintaining a "hospitality room" at the State Convention of the Democratic Party of Hawaii by Congressman Cecil Heftel, a candidate for the U.S. House of Representatives, would constitute an expenditure subject to the disclosure provisions of the Federal Election Campaign Act. Funds donated to the Congressman to defray the costs of maintaining such a room would be contributions under the Act. This conclusion is based on several factors:

- Mr. Heftel's appearance at the convention would be before "a substantial number of people who comprise a part of the candidate's electorate . . .";
- The State party convention is inherently a partisan event at which decisions will be made affecting both the primary and general elections; and
- Mr. Heftel's attendance at the convention and maintenance of a hospitality suite is likely to "have the effect of furthering (his) candidacy."

**AO 1978-23: Payroll Deduction Plan**

The Square D Company may facilitate a method of collecting political contributions by the Inter-



national Association of Machinists (IAM) whereby members of IAM authorize payroll deductions of contributions to IAM's separate segregated fund (Machinists Nonpartisan Political League). Square D Company may facilitate this plan even though the company itself does not utilize a payroll deduction system to facilitate political contributions from executive employees to its own separate segregated fund.

#### **AO 1978-24: Preemption of State Law**

The Sonneland for Congress Committee does not have to comply with a Washington State statute which requires campaign advertising to disclose the party affiliation of the candidate involved. This portion of the Washington law is preempted by the Federal Election Campaign Act because:

- Sponsorship statements and notices of the availability of campaign finance reports on campaign advertising "... are an integral part of the scheme prescribed by the Act for effective full disclosure"; and
- The Act preempts any State law with respect to "required disclosures in conducting political campaigns for Federal office."

#### **AO 1978-25 (Part A): Contributions for a Primary Runoff Election**

Congressman Thad Cochran and Senator Jesse Helms, candidates for the U.S. Senate in Mississippi and North Carolina, respectively, may not benefit from a separate contribution limitation for a primary runoff election in which they are not on the ballot. Even though a runoff is required for Senate candidates seeking the nomination of another political party, a candidate who has already been nominated through a primary election victory is "no longer seeking nomination and therefore is not regarded as a candidate with respect to any runoff election... to select another nominee for the same Federal office." Contributions with respect to a potential runoff may not be made or accepted and then held in escrow with a view toward spending them in the event a runoff becomes necessary.

#### **AO 1978-25 (Part B): Conventions as Elections**

Neither the Colorado nor Minnesota political party convention is considered a separate election for purposes of the Federal Election Campaign Act. Under the Act, a convention is considered a separate election (from the primary and general) only if it "has the authority to select a nominee..." Under Colorado and Minnesota State law, political party conventions do not have this authority. Rather, their authority is limited to designating or endorsing party candidates to run in the party primary. Therefore, candidates participating in the conventions do not have a separate contribution limitation with respect to the convention.

#### **AO 1978-26: Stockholder Solicitation Through Conduits**

Citicorp's separate segregated fund, Citicorp Employees Voluntary Political Fund (the Fund), may deliver solicitation materials to stockholders through conduits (e.g., brokers, dealers, banks or other nominees) who hold stock for the beneficial owners provided:

- Any solicitation by the Fund is intended exclusively for and speaks only to those persons falling within the definition of "stockholder" in the Commission's regulations (11 CFR 114.1(h)); and
- The stockholders would otherwise be qualified to make contributions under the Act.

#### **AO 1978-27: Executive and Administrative Personnel**

The Morrison Political Action Committee (MPAC) may solicit voluntary contributions from certain unit managers of Morrison Incorporated (its connected organization) and its subsidiaries. These unit managers may be solicited as executive and administrative personnel because of their authority and functions within Morrison Incorporated. For example, they:

- Are paid on a salaried rather than hourly basis and receive a bonus based on the performance of their unit;

- Have management and supervisory authority over a substantial number of employees including complete control of hiring, firing, discipline and promotion;
- Have independent authority to implement the policies and directives of Morrison Incorporated and discretionary authority over day-to-day operations;
- Function as a unit manager on a continuing basis and are eligible for promotion to higher level supervisory positions.

#### **AO 1978-28: Party Get-Out-The-Vote Drive**

The Washoe County Republican Party Committee (the Committee) of Nevada may conduct a get-out-the-vote drive in connection with the general election on behalf of State and local candidates.

However, because it is a Federal election year, the expenses for the drive are considered to be made, in part, for the purpose of influencing the election of a person to Federal office. They must be allocated on a reasonable basis (11 CFR 106.1) between expenditures made to influence a Federal election and those which are made to influence a State or local election. That portion of the expenses which would be attributable to a Federal election must be paid from funds which are lawful under the Act.

Since the Committee does not anticipate that the portion of the funds attributable to a Federal election will exceed \$1,000, the Committee will not be required to register and report as a "political committee" under the Act. Furthermore, because the drive will not identify any "clearly identified" candidate for Federal office, the expenditures attributable to Federal elections are not considered contributions to or expenditures on behalf of any specific candidate for Federal office.

#### **AO 1978-29: Requirements of Authorized Committee**

A nonprincipal campaign committee authorized by Congressman Ted Weiss (the Committee)

which does not anticipate receiving contributions or making expenditures in excess of \$1,000 during a calendar year would not be a "political committee" as defined in the Act. Congressman Weiss would not have to file FEC Form 2a (on which a candidate authorizes a "political committee" other than a principal campaign committee). The Committee would not have to register under the Federal Election Campaign Act; nor would it be required to file reports of receipts and expenditures with the principal campaign committee of Congressman Weiss.

However, because the Committee's activities are to influence the election of Congressman Weiss to Federal office, "... all contributions received and expenditures made (by the Committee) are regarded as received and made by the authorizing candidate and his principal campaign committee." Therefore, either the candidate or his principal campaign committee would be responsible for keeping the records and filing the reports required by the Act on the Committee's activities.

#### **AO 1978-30: Utah Convention as Election**

Edwin Firmage, candidate for the U.S. House of Representatives, may not receive contributions with respect to each of three separate elections in the State of Utah unless:

1. Under Utah State Law, he is one of two party nominees at the State party convention eligible to run in a subsequent primary election; **and**
2. Mr. Firmage receives the greatest number of votes in the primary and is thus the party's nominee in the general election.

In this case, an individual could contribute up to \$1,000 with respect to each of the three elections: the convention, the primary election and the general election.

However, if Mr. Firmage is unopposed at the convention or he receives at least 70 percent of

the vote at the convention and thus directly becomes the party's nominee for the general election, only two contribution limitations would apply: one for the convention and one for the general election.

This opinion supercedes AO 1975-54, which was published in the *Federal Register* on December 18, 1975 (40 FR 58802).

**AO 1978-32: Payments for Appearances  
by Officeholder**

Senator Herman Talmadge may accept, as honoraria, payments from individuals or separate segregated funds for appearances he makes before them. Such payments would not be considered contributions to Mr. Talmadge's campaign for reelection. As honoraria, however, the payments would be subject to the limitations in 2 U.S.C. §441i.

As a general rule, payments made to Senator Talmadge's principal campaign committee (the Committee) "... may be treated as contributions when the sponsor making the contribution states that it is for the purpose of supporting Senator Talmadge's reelection and is not a payment (honorarium) for the Senator's appearance." As contributions, the payments are subject to the limitations and reporting provisions of the Act.

Without specific facts, the Commission would not conclude categorically that **all** receipts regarded by the Committee as contributions are **not** honoraria. The Commission has no jurisdiction over any possible application of Senate Rules or tax laws to the situations described.

**AO 1978-33: Statements on  
Advertising**

Robert S. Allen, candidate the the U.S. House of Representatives, must include the required statements of campaign authorization and report availability on newspaper advertisements which advocate the defeat of his opponent and solicit contributions to Mr. Allen's campaign, regardless of how "terse or cryptic" the ads may be.

2 U.S.C. §§435(b) and 441(d). Because the ads appeared in a newspaper, which is one of the five specific methods of "general public political advertising" mentioned in the Act, the campaign authorization statement must appear.

In addition, the notice on campaign report availability must appear on "... all printed literature and advertisements soliciting contributions ..." regardless of size.

**AO 1978-34: Use of Business Phones  
by Candidate**

The Citizens for Downey '78 Committee (the Committee) may use corporate or noncorporate business telephones for its campaign activity instead of establishing the Committee's own phone bank. However, the Committee must reimburse the businesses, within a reasonable time, for the normal and usual rental charge of such facilities. If not reimbursed, the businesses are considered to have made an in-kind contribution.

Normal and usual rental charge is considered the cost of renting the phones in the normal market, "... including the costs for the use of office space, utilities and furniture to conduct the telephoning." Therefore, the Committee may not use the per-call cost charged by the New York Telephone Company as the only basis for reimbursement. The difference between this charge and the normal and usual rental charge would constitute a contribution in-kind by the businesses to the Committee. In the case of a corporate business, this contribution is prohibited. An unincorporated business may make a contribution in-kind subject to the \$1,000 per election limitation of the Act.

**AO 1978-35: Use of Trust Funds to  
Retire Campaign Debts**

Senate candidate Bill Waller may use funds in a trust set up for him in 1971 to pay primary debts incurred in his 1978 Senate campaign. Because he had access and beneficial enjoyment to the funds before March 1978, when he became a candidate, the trust is considered

"personal funds" and, thus, is not subject to contribution limitations. Any interest accruing on the trust is also considered personal funds.

#### **AO 1978-36: Activities of Separate Segregated Fund**

The National Nutritional Foods Political Action Committee (NNFPAC), the separate segregated fund of a trade association, is not prohibited by the Act from spending funds to influence legislative action on particular issues. NNFPAC may also use its voluntary contributions to communicate with the general public on legislative issues provided the communications do not solicit contributions to NNFPAC. Such expenses paid by NNFPAC must be reported as disbursements by the political committee.

The Commission noted it could not address any possible application of the Federal lobbying statutes or the Internal Revenue Code to such activities. The Commission has no jurisdiction in these areas.

#### **AO 1978-37: Use of Excess Campaign Funds**

Congressman Bruce Caputo may use contributions received by the Committee to Reelect Congressman Bruce Caputo (1978 Committee) to retire 1976 general election debts incurred by the Caputo for Congress Committee (1976 Committee). The funds transferred by the 1978 Committee would not be considered contributions to the 1976 Committee (and, therefore, **not** subject to 1976 contribution limitations) provided:

- The contributions were originally made to influence Mr. Caputo's 1978 election to Federal office;
- The contributions were received by the 1978 Committee before the date on which Mr. Caputo ceased to be a candidate for Federal office in 1978; and
- If the contributions were received after the date on which Mr. Caputo ceased to be a candidate, they were received before Mr.

Caputo had sufficient funds to retire 1978 campaign debts of his campaign for Federal office.

Convention expenses allocable to Federal elections would not generally have to be further allocated to specific candidates for Federal office. However, allocation to specific candidates would be required if the expenditure was "made on behalf of a clearly identified candidate for Federal office to whom it could be directly attributed."

The Party may also accept corporate funds for advertisements to be placed in a monthly party newsletter, provided such funds are permissible under State law. However, if any portion of the material published in the newsletter relates to Federal elections, then the newsletter expenses must be allocated between Federal and non-Federal elections. The Federal portion of the expenses must be paid from the Federal campaign committee of the Party. Such expenses would not constitute a contribution to specific candidates.

If, however, the newsletter contains communications which expressly advocate the election of clearly identified Federal candidates, "... the expenses of the newsletter attributed to those communications... must be treated as general election expenditures of the Party under 2 U.S.C. §441a(d)." Such expenditures must be paid from the Federal campaign committee of the Party.

#### **AO 1978-38: Solicitation and/or Authorization Statements on Envelopes**

The Paula Unruh for Congress Committee (the Committee) must include solicitation and/or authorization statements on envelopes used to mail contribution solicitations or on envelopes used for the return of contributions **only if**:

- The envelope contains on its face or back a solicitation for contributions; and/or
- The envelope contains on its face or back a

communication which expressly advocates the election or defeat of a clearly identified candidate.

In the first case, the statement regarding availability of reports (2 U.S.C. §435(b)) must appear on the envelope. In the second case, the statement of authorization (2 U.S.C. §441d) must appear. If the envelope has a contribution solicitation and expressly advocates, then it must contain both statements. The mere printing of "...the Committee's mailing address would under no circumstances be considered a communication that needed to include either the statement of authorization or the availability of campaign finance reports."

#### **AO 1978-39: Affiliation of Separate Segregated Funds**

INN/PAC, the political committee sponsored by the International Association of Holiday Inns, Inc. (the Association), and HI/PAC, the political committee sponsored by Holiday Inns, Inc. (Holiday), are affiliated within the meaning of the Act and regulations. The bylaws and charter of the Association and Holiday's policy statement indicate that Holiday has the authority to direct and influence in several specific ways, the Association and its membership who are franchisees of Holiday. Accordingly, both INN/PAC and HI/PAC are required to share a single contribution limit with regard to contributions they make to candidates and committees. Contributions made to INN/PAC and HI/PAC would be considered contributions to a single political committee. Transfers between the two committees would be unlimited. Both committees must amend their Statements of Organization to identify each other as affiliated political committees. See 11 CFR 102.2(b)(1).

#### **AO 1978-40: Loans for Candidate's Personal Living Expenses**

Loans received by Ray Kogovsek, candidate for the U.S. House of Representatives, during the period when he was considering becoming a candidate for Federal office are considered contributions under the Act, even though the

loans were used only to defray the personal living expenses of Mr. Kogovsek and his family.

Funds provided to a candidate solely to defray personal living expenses are contributions unless the funds are the candidate's "personal funds" as defined in the Commission's regulations (11 CFR 110.10). The loans given to Mr. Kogovsek do not meet this definition and, therefore, are contributions subject to the limitations of the Act. The loans must also be reported by the Ray Kogovsek for Congress Committee.

#### **AO 1978-41: Contribution Limitations**

Gerald B. Solomon, a candidate for the U.S. House of Representatives, may accept contributions from an individual totaling \$1,000 with respect to the primary election and \$1,000 with respect to the general election. These limitations apply even though Mr. Solomon will be unopposed in the New York State primary election on September 12. The Commission noted that, if Mr. Solomon's name appeared on the primary election ballot, he would have to file the pre- and post-election reports for that election, even though "there is no other candidate listed on the ballot in opposition to (him)."

#### **AO 1978-42: Solicitations by Dental Association**

The Dental Society of the State of New York (the Society) may solicit contributions to its separate segregated fund, Empire Dental Political Action Committee (EDPAC), in conjunction with the mailing of dues statements to the Society's individual members.

Members of the Society may use a single personal check to make both contributions to EDPAC and pay their dues to the Society. The check must be made payable to the Society or to one of its district dental societies. Checks representing the combined dues payment and contribution may be placed in the bank account of the Society or district society. They may then remit the contribution portion to EDPAC by

means of a separate check. This conclusion was based on several assumptions:

- Contributions are regarded as "received" by EDPAC at the time the combined dues payment/contribution is received by the Society or any of the district societies.
- The contribution portion of the checks are deposited in EDPAC's depository within 10 days after having been "received."
- All records of the Society's bank accounts into which combined dues payments/contributions are deposited are available to the Commission for inspection.
- The Society (and any district societies) must maintain for a specified period of time "... usual and customary accounting records of members' dues payments and other appropriate records indicating those members who make political contributions in combination with dues payments."

#### **AO 1978-43: Use of Surplus Campaign Funds**

Upon her retirement from Congress, Congresswoman Barbara Jordan may use surplus funds from previous campaigns "to employ staff and pay the incidental expenses . . . in the performance of duties which are imposed by virtue of having been a Member of Congress." (2 U.S.C. §439a; 11 CFR 113.2). The opinion noted that any possible application of the Rules of the House of Representatives or the Internal Revenue Code to the activity described is not within the Commission's jurisdiction.

#### **AO 1978-44: Intern Program Sponsored by Senator**

An annual summer intern program sponsored by Senator Ted Stevens of Alaska is educationally oriented and not campaign related. Therefore, funds donated to pay for travel expenses of the interns to Washington, D.C. are not considered contributions to Senator Stevens.

Because the funds donated for air fare are not contributed to Mr. Stevens to support his activities as a Federal officeholder, they are not

subject to and need not be reported under Part 113 of the Commission's regulations.

The funds are not considered to be donated for the purpose of supporting Mr. Stevens' activities as a Federal officeholder because:

- The funds are at no time under the dominion or control of Senator Stevens or his staff;
- The funds are donated specifically to defray the expenses of intern travel;
- A travel agency in Alaska coordinates and disburses the funds from a separate account established specifically for the purpose.

#### **AO 1978-45: Rate of Payment for Billboard**

The North Kansas City Development Company (the Company) will be considered to have made a contribution in-kind if it rents billboard space to Citizens for Coleman (Citizens), the principal campaign committee of a candidate for the House of Representatives, for less than the commercial rate for similar space. Because the rate proposed by the company for Citizens is lower than the "normal and usual charge" of the billboard space and because the Company does not routinely offer a similar discount to commercial vendors, the difference between the normal and usual rental charge and the discounted rate would be considered a contribution in-kind to the candidate. The Act prohibits contributions of any amount from corporations.

#### **AO 1978-46: Corporate Advertising in Connection with State Party Activities**

The Republican Party of Texas (the Party) may use corporate treasury funds (assuming such funds are permissible under State law) to defray expenses of the Republican State Convention (the Convention) which are not allocable to Federal election purposes. If any activities at the Convention are in connection with Federal elections the Convention expenses allocable to Federal election purposes must be paid from the separate Federal campaign committee of the

Party, established in accordance with the Commission's regulations at 11 CFR 102.6. Activities would be considered in connection with Federal elections if they involved:

- Soliciting, making or accepting contributions to influence the results of Federal elections; or
- Communications expressly advocating the election or defeat of a clearly identified candidate for Federal office.

Convention expenses allocable to Federal elections would not generally have to be further allocated to specific candidates for federal office. However, allocation to specific candidates would be required if the expenditure was "made on behalf of a clearly identified candidate for Federal office to whom it could be directly attributed."

The Party may also accept corporate funds for advertisements to be placed in a monthly party newsletter, provided such funds are permissible under State law. However, if any portion of the material published in the newsletter relates to Federal elections, then the newsletter expenses must be allocated between Federal and non-Federal elections. The Federal portion of the expenses must be paid from the Federal campaign committee of the Party. Such expenses would not constitute a contribution to specific candidates.

If, however, the newsletter contains communications which expressly advocate the election of clearly identified Federal candidates, "... the expenses of the newsletter attributed to those communications... must be treated as general election expenditures of the Party under 2 U.S.C. §441a(d)." Such expenditures must be paid from the Federal campaign committee of the Party.

#### **AO 1978-47: Contribution Limitations**

Since the Commission is still in the process of securing facts as to whether the Pennsylvania

Medical Political Action Committee (PMPAC) and the American Medical Political Action Committee (AMPAC) are affiliated, the Commission cannot issue an advisory opinion concluding that the Don Bailey for Congress Committee may lawfully accept general election contributions totaling \$8,000 from PMPAC and AMPAC.

#### **AO 1978-48: Use of Electrical Car in Campaign**

Senator James A. McClure may personally lease an electric car from the General Electric Company to commute from his Virginia residence to his office in Washington, D.C. However, if Mr. McClure ships the car to Idaho for use in his campaign for reelection, the cost of shipping the vehicle would be considered a contribution in-kind by Mr. McClure to his campaign committee. In addition, a reasonable portion of the cost of leasing this vehicle must be allocated as a campaign expense, and be considered a contribution in-kind from Mr. McClure.

#### **AO 1978-49: Contribution In-Kind**

Congressman Ted Risenhoover need not consider a magazine advertisement expressly advocating his defeat as a candidate for Federal office as a contribution in-kind to his campaign, if the expenditure for the advertisement was made without the "cooperation or consultation" of Mr. Risenhoover, his campaign committee or any of his authorized agents. In this case, even though Mr. Risenhoover considered the advertisement as "good publicity" for his campaign, the expenditure for the advertisement would be regarded as an "independent expenditure" (by the person placing the advertisement) not subject to limitation and not reportable by Mr. Risenhoover's campaign committee.

#### **AO 1978-50: Party Get-Out-The-Vote Drive**

The Michigan Democratic Party (the Party) may conduct a get-out-the-vote drive for the purpose of "identifying and motivating persons to support the Party's Gubernatorial nominee."

However, the expenditures for such a drive must also be regarded as for the additional purpose of influencing the election of the Party's candidates for Federal office. Therefore, the expenses for the drive must be allocated on a reasonable basis between those made to influence Federal elections and those which are not.

The expenditures allocable to Federal candidates must be paid from and reported by the Party's Federal campaign committee. These expenses do not, however, need to be allocated as contributions to or expenditures on behalf of specific candidates for Federal office, unless the drive is conducted on behalf of clearly identified candidates. The Party may use materials which identify candidates for Federal office in connection with the drive, without the expenses for those materials being considered a contribution or expenditure, provided the materials are prepared in accordance with the slate card/sample ballot exemption under the Act (2 U.S.C. §431(e)(5)(E) and §431(f)(4)(G)).

The Michigan State law requiring party committees to make all expenditures from one account is preempted and superceded by the provisions of the Act which require that expenditures to influence the results of Federal elections be made and reported by a registered political committee.

#### **AO 1978-51: Contributions from American Indian Tribe**

The Friends of Eldon Rudd, a political committee, may accept a contribution from the Ak-Chin Indian Community (the Community). As a nonincorporated entity with no corporate members, the Community is considered a "person" as defined in the Act (2 U.S.C. §431(h)), permitted to make contributions. Contributions from persons may not exceed \$1,000 to any single candidate per election. If, during a calendar year, the Community contributes more than \$1,000 to various candidates for Federal office (or political committees supporting such candidates), the Community would then be considered a "political committee" subject to

the registration and reporting requirements of the Act.

#### **AO 1978-52: Participation in Corporate Educational Activities**

Congress Allen E. Ertel may, under certain circumstances, receive written materials prepared by the Sun Company (a corporation) without being considered to have accepted a prohibited corporate contribution. The Sun Company may lawfully prepare and distribute the materials as internal communications to Sun executives and stock-holders. The materials could also be prepared for lobbying purposes which are outside the Act and jurisdiction of the Commission.

Receipt of the materials by Mr. Ertel would not be a "contribution" or "expenditure" because:

- "... There is no apparent purpose to influence [Mr. Ertel's] nomination or election to Federal office . . ."; and
- The materials "are not things of value which may be 'consumed' or utilized by [Mr. Ertel's] campaign in a manner that might benefit or influence [his] candidacy."

The Commission also based its conclusion on the fact that only a single copy of the materials would be given to Mr. Ertel.

#### **AO 1978-53 (A-E): Contributions from Separate Segregated Fund**

Contributions received by five Congressmen from the National Education Association's Political Action Committee (NEA-PAC) in 1975 and 1976 do not have to be returned as a result of the recent District Court decision in *FEC v. National Education Association, et al.*

The decision held that a system of collecting political contributions used by NEA-PAC (the "reverse checkoff system") is prohibited by the Act (2 U.S.C. §441b). The Court's decision did not, however, address the question of the status of contributions already received by candidates or committees from NEA-PAC.



The Commission will not require the return of 1975 and 1976 contributions, provided they are otherwise lawful under the Act, "... since the Commission has no evidence that [the candidates and committees] had any knowledge when NEA-PAC contributions were received that such contributions had, at least in part, been collected by a procedure which has now been held to be illegal . . . ."

#### **AO 1978-54: Preemption of Alabama State Law**

The Federal Election Campaign Act preempts and supercedes the requirements of an Alabama Law (Chapter 22 of Title 17, Code of Alabama 1975) regarding the designation of political committees by candidates for Federal office. The Act and the Commission's regulations provide that State law is preempted and superceded with respect to: **"the organization and registration of political committees supporting Federal candidates**, the reporting and disclosure of political contributions and expenditures to and by candidates to Federal office and political committees supporting them, and limitations on contributions and expenditures regarding Federal candidates and political committees." 11 CFR 108.7(b). (Emphasis added.)

#### **AO 1978-56: Dual Role for Presidential Candidate**

Congressman Philip Crane may continue to serve as National Chairman of the American Conservative Union (ACU) while he is a candidate for President of the United States. ACU is a non-profit, unincorporated organization. Payments made to defer expenses incurred in the performance of Mr. Crane's duties as ACU chairman would not be considered as in-kind contributions to his campaign or corresponding expenditures by the campaign committee. This conclusion was based on the following specific facts: ACU has not and will not promote, recognize or otherwise identify Mr. Crane as a candidate for President of the United States. Mr. Crane will not use his ACU office to further his candidacy. Moreover, ACU will not seek to participate in primary elections or delegate selection

and will not transfer any funds to Mr. Crane or his committee. The Commission also assumed that ACU will not in any way involve itself with contributions to Mr. Crane or make any communications that expressly advocate his election or the defeat of any other Presidential candidate. Under these circumstances, any publicity resulting from Mr. Crane's activity as Chairman of ACU will not be considered a contribution under the Act.

#### **AO 1978-58: National Party Committee**

The Pyramid Freedom Party is not considered to be a "national committee," as defined in the Act, because it has not yet demonstrated sufficient activity on a national level. 2 U.S.C. §431(k). Therefore, because it supports only a candidate for the office of President, it will be regarded as a single candidate committee for purposes of the reporting requirements and contribution limitations of the Act.

Examples of activity on a national level noted by the Commission included:

- Nomination of Presidential and Vice Presidential candidates;
- Nomination of numerous candidates for the Senate and House of Representatives in various States;
- Activities outside of those directly involved in a specific election (e.g., voter registration or get-out-the-vote drives, organization of volunteer workers, publicizing issues of importance to the party, etc.).

#### **AO 1978-59: Definition of Honorarium**

Payment to Senator Daniel Patrick Moynihan would be considered honoraria if the payments involved the reprinting or republication, **as an article**, of any of his previously published works. The payments are considered honoraria regardless of "whether or not additional effort is required from the author to produce the income from the reprint." Payment for an article is specifically included in the definition of "hono-

arium" in the Commission's regulations (11 CFR 110.12(b)). "Article" is defined to include a writing (other than a book) which has been published.

Income realized from the publication of books, however, is not considered an honorarium. Therefore, payments for the reprinting or republication of his works in a book are not considered honoraria and are not subject to the honoraria limitations in 2 U.S.C. §441i.

#### **AO 1978-60: Use of Network Television Tape**

Use of an NBC videotape by Congressman Harold S. Sawyer in connection with his campaign for reelection to Federal office would constitute a prohibited contribution in-kind by a corporation, because the videotape was made and then given to him free of charge by NBC.

Congressman Sawyer may, however, use a copy of the videotape for campaign-related activities if he first pays NBC the usual and normal charge for such film. "Usual and normal charge" would be "the amount which NBC regularly charges for videotape copies to any person who, having appeared in an NBC newscast, requests a copy of the videotape segment." On the other hand, if NBC's established policy and practice is to provide such videotape segments free of charge to any individual who appeared in a newscast, the free film given to Congressman Sawyer would not constitute a contribution in-kind and could be used in connection with campaign-related activities.

#### **AO 1978-61: Corporate Solicitation of Franchisees**

Jerrico, Inc. (Jerrico) or its separate segregated fund may solicit contributions from the executive and administrative personnel of the franchisees (restaurants) of Jerrico and of Long John Silver's, Inc. (LJS), a wholly-owned subsidiary of Jerrico.

Because of Jerrico's "... continuing control and direction over the business policies, practices and procedures of its franchisees, as well as the nature and extent of the franchisees' contractual obligation to Jerrico..." the franchisees are considered to be affiliates of Jerrico.

All separate segregated funds established by the franchisees would share a single contribution limit with Jerrico's separate segregated fund.

#### **AO 1978-63: Donations to Retire Campaign Debts**

Donations to retire campaign debts of Friends of Dick Obenshain (the Committee), the principal campaign committee of the late Richard Obenshain, are not considered contributions within the definition of the Act or regulations. Because the donations to the Committee are not made to influence the results of a Federal election, they are not subject to contribution limits. As receipts, however, they must be reported by the Committee. The retirement of debts of the Committee must also be reported.

The conclusion is based on two assumptions:

- "Any funds received in excess of the amount required to liquidate the debt will not be transferred or applied for the benefit of any 'political committee' or 'candidate'..."; and
- None of the debts to be retired will be assumed by any political party organization.

#### **AO 1978-64: Contributions by Party Committee**

The National Republican Senatorial Committee may give up to its limit of \$17,500 to the 1978 Senate campaign of John Warner, even though the Committee had previously given that amount to the 1978 Senate campaign of the late Richard Obenshain. Mr. Warner was selected as the new Republican nominee for the Senate in Virginia upon the death of Mr. Obenshain. The limitations "relate to a particular candidate for the Senate rather than a particular Senate seat." 2 U.S.C. §441a(h).

**AO 1978-65: Reporting Rules and Contribution Limits for Unopposed Candidates**

Although Andy Ireland, candidate for Congress, is unopposed in Florida's general election, he is considered a candidate because he will not receive a certificate of election until after the general election. Accordingly, Mr. Ireland is required to file pre- and post-general election reports. Regulations concerning quarterly reports are also applicable. See 11 CFR 104.1(c)(1)(i) and 104.4(d).

A separate contribution limit applies to each election in which Mr. Ireland seeks nomination or election. Thus, one individual could contribute \$1,000 for his primary and another \$1,000 for the general election. As a general rule, contributions made after the date of the primary count toward the general election. In this case, the date on which a primary election would have been held is considered to be the date of the primary.

Surplus funds from the 1978 campaign, consisting of funds received before the general election, may be transferred as a lump sum to the 1980 campaign committee. These funds are not subject to the 1980 election limits. The individual contributors of surplus funds need not be identified on subsequent reports since they were already disclosed in 1978.

Except for contributions made to retire debts outstanding from the 1978 election, contributions received after the 1978 general election are attributable to a 1980 election and count against the 1980 election limits.

**AO 1978-66: Preemption of California Law**

William E. Dannemeyer, a candidate for the U.S. House of Representatives, may accept contributions from lobbyists registered under California law, even though he is also currently an elected State officer in California. A State law prohibiting contributions from lobbyists to any State officer is preempted by the Federal Election

Campaign Act, to the extent the officer accepts contributions made to him (or his campaign committee) as a candidate for Federal office. 2 U.S.C. § 453.

**AO 1978-67: Headquarters Shared by Federal and Non-Federal Candidates**

Congressman Glenn M. Anderson may share the costs of a combined campaign headquarters with a candidate for State office provided the costs of the shared facilities are allocated between the two campaigns "in a manner which equitably reflects the actual use and benefit to each campaign." Payment of Congressman Anderson's share of the costs would be considered an expenditure by his principal campaign committee and may be made in one of the following ways:

- Payment by Congressman Anderson's committee directly to the commercial vendor(s);
- Payment by Congressman Anderson's committee to the State candidate's committee (which, in turn, pays the full amount to the commercial vendor(s)); or
- Payment directly to the commercial vendor(s) by a single check drawn on an escrow account established jointly by Congressman Anderson's committee and the State candidate's committee.

Payment may not be made by means of a transfer from the State candidate's committee to Congressman Anderson's committee if the State candidate's committee has accepted any funds which would not be lawful under the Act. If the State candidate's committee paid the entire cost of the headquarters, without being reimbursed by Congressman Anderson's committee, the payment would be considered a contribution in-kind to Congressman Anderson's campaign, subject to the Act's limitations and prohibitions.

**AO 1978-68: Contributions by Credit Card**

The Seith for Senate Committee (the Committee) may accept contributions made by credit

card which are authorized to be made over the telephone. The definition of "contribution" includes a written agreement to make a contribution, and does not require that the agreement be signed by the contributor. Such credit card contributions would be considered received by the Committee (and thus, reportable) when the proceeds of the transaction are received by the Committee from the credit card company.

The amount of the contribution is considered to be the total amount authorized by the contributor. The total contribution may not be reduced by discounts or service charges deducted by the credit card company before transferring the proceeds to the Committee. Any such discounts or service charges are considered expenditures made by the Committee on the date when it receives notice that the discount or service charge has been taken.

The conclusion is based on the assumptions that:

- The credit card company follows its usual and normal collection procedures with respect to obtaining payment from credit card holders who used their card to make a political contribution;
- The credit card company and the independent company receiving calls from contributors render "their services in the ordinary course of business"; and
- The credit card company and the independent company receiving calls are paid the normal and usual charge for their services.

**AO 1978-69: 1976 Campaign Committee  
Redesignated for  
1982 Campaign**

The Melcher for Senate Committee (the Committee), Senator Melcher's principal campaign committee for the 1976 election, may begin receiving and expending funds for the Senator's 1982 campaign. Senator Melcher, after receiving the first contribution for the 1982 campaign, must file a Statement of Candidacy for the 1982 election. An amended Statement of Organiza-

tion (FEC Form 1) must also be filed to designate the Committee as the principal campaign committee for the 1982 election.

Committee campaign reports indicated that it had sufficient funds on hand on January 1, 1977, to satisfy all outstanding debts from the 1976 campaign. The Commission concluded, therefore, that contributions received by the Committee between January 1977 and the date of the 1982 Montana Democratic primary election count against the 1982 primary election contribution limits.

**AO 1978-72: Sale of Pamphlet  
by Candidate**

House candidate Max Carasso may publish and sell a pamphlet consisting of articles he previously wrote (between 1956 and 1969) without the expenses or proceeds of the sale counting as campaign contributions or expenditures. The income received from the sale of the pamphlet would be considered personal funds provided that:

- The price charged for the pamphlet is a reasonable reflection of Mr. Carasso's costs and profit, and is the same as he would charge if he were not a candidate; and
- Neither the advertisements for the pamphlet nor the articles themselves include solicitations for his campaign or advocate the election or the defeat of any clearly identified candidate.

**AO 1978-73: Donation of Honorarium to  
Charitable Organization**

An honorarium offered to Representative Dan Rostenkowski is not subject to the monetary limitations on honoraria as long as the payor organization contributes the honorarium directly to a charitable organization according to the rules prescribed by 2 U.S.C. §441i(b). Under that provision, adopted by Congress on December 20, 1977 (Public Law 95-216, Section 502), an honorarium is not considered to have been "accepted" by an officeholder (and, therefore, is not subject to the limits) when the

payor organization contributes it directly to one of five charitable organizations suggested by the officeholder. The limitations on honoraria are triggered only if the honorarium is in fact "accepted."

**AO 1978-74: Payroll Deduction Plan for Labor Organization's Members**

The International Union of Operating Engineers (IUOE), Local 675, and Lone Star of Florida, Inc. (or any other corporation employing IUOE members) may agree to use a payroll deduction plan to collect contributions from IUOE members for IUOE's separate segregated fund. The agreement may be made even if the corporation does not provide such a plan for soliciting contributions from its own executive and administrative personnel. See 11 CFR 114.5(k) (4).

**AO 1978-75: Solicitation of Parent Corporation's Stockholders by Subsidiary's Separate Segregated Fund**

The United Good Government Fund (the Fund), the separate segregated fund of United Airlines, Inc. (United), may solicit the stockholders of United's parent corporation UAL. Under the Commission's regulations, a corporation or its separate segregated fund may solicit the executive and administrative personnel of the corporation's subsidiaries and affiliates. In this case, the parent corporation (UAL) is considered an affiliate of the wholly-owned subsidiary (United); hence, the Fund may lawfully solicit the individual stockholders of UAL. All separate segregated funds established by a corporation, its affiliates, subsidiaries, branches and divisions are subject to a single contribution limitation.

**AO 1978-76: Use of Film Produced with Campaign Funds**

A film produced with campaign funds may be shown on television, as a public service announcement, after the November election. The film depicts facilities and services available to constituents through Representative Robert Duncan's congressional office. A station's offer

to run the film as a public service announcement, free of charge to Mr. Duncan, would not constitute an in-kind contribution to Mr. Duncan. Under the Act, a news story, commentary or editorial distributed through the facilities of a broadcasting station is not considered an expenditure and is not treated as an in-kind contribution unless the broadcast facilities are owned or controlled by a political party, political committee or a candidate. The Commission concluded that this exception applied to the broadcast of public service announcements.

The Commission expressed no opinion as to the application of tax laws, House Rules, or the rules of the Federal Communications Commission to the situation described, since these matters fall outside the Commission's jurisdiction.

**AO 1978-77: Volunteer Activity Rendered by Corporate Officer**

Congressman Les Aspin may use a campaign radio commercial in which an officer of American Motors Corp. (AMC), identified by name and title, describes the legislative efforts of the Congressman. The activity would not constitute a contribution to Representative Aspin's campaign because the campaign committee will pay for all the production and broadcasting costs of the commercial. The actual time spent in taping the commercial would be regarded as **volunteer activity** by the AMC officer. Under the Act, volunteer activity is not considered a political contribution.

**AO 1978-78: Funds Contributed to Defray Office Rent**

The National Conservative Political Action Committee (NCPAC) may not, under 2 U.S.C. §431(e)(5)(H), solicit persons otherwise prohibited from making political contributions for funds to defray office rental expenses. This special provision of the Act exempts certain funds from the definition of contribution, **but only when contributed to a national or State committee of a political party**. Even though

NCPAC supports a wide variety of Federal and State candidates and engages in political education on specific issues of public interest, it is not a "political party" under the Act.

Any funds given to NCPAC for the purpose of defraying office rental expenses are, therefore, considered contributions subject to the Act's limitations and reporting requirements.

**AO 1978-79: Separate Contribution Limit for Candidate Unopposed in General Election**

Senator J. Bennett Johnston's name will not appear on the general election ballot in Louisiana because he is unopposed in that election. He may nevertheless receive contributions with respect to the 1978 general election because the certificate of election is not granted until after the general election. See 11 CFR 110.1(j). Contributions made after the Louisiana primary on September 16, 1978, but not later than the general election on November 7, would be attributed to the general election. They would count against a separate limit for that election, rather than against the limits for an election in 1984.

Senator Johnston's campaign committee is required to file pre-election and post-election reports covering the general election period.

**AO 1978-80: Campaign Use of Property Owned by Candidate**

Representative Benjamin Gilman's campaign committee may use its funds to lease office space in a building owned by Mr. Gilman. Such payments must be reported as operating expenditures by the committee.

**AO 1978-83: Use of Authorization Form to Secure Corporate Approval of Solicitations by Trade Association**

The Construction Equipment Political Action Committee (CEPAC), a separate segregated fund of a trade association, may set up a booth at the annual convention of that trade association to attempt to secure corporate approval for CEPAC

solicitations. Specifically, CEPAC may use the booth to obtain from representatives of the member corporations of the trade association their signatures on an authorization form giving approval for the solicitation of their stockholders and their executive and administrative personnel. 11 CFR 114.8. CEPAC's use of special authorization forms to obtain corporate approval to solicit authorized personnel is permissible as long as:

- The authorization form states its purpose and any limitations that CEPAC wishes to place on the class of persons to be solicited; and
- The authorization form indicates that corporate approval is required and that such solicitations must be limited to one trade association per year.

A booth may be used to secure corporate approval for solicitations provided:

- The solicitation approval request is in writing; and
- The request form is signed by a person authorized to grant such approval.

Once corporate approval has been granted, CEPAC may solicit and accept contributions from the personnel authorized to be solicited by the corporation.

**AO 1978-85: Use of Excess Campaign Funds**

The Whitehurst for Congress Committee may use excess campaign funds to defray expenses of a buffet luncheon to be given in honor of Mr. Whitehurst's 10th year as Congressman from Virginia. A candidate or individual holding Federal office may use excess campaign funds to defray any ordinary and necessary expenses incurred in connection with duties as a Federal officeholder. Since this event relates to Mr. Whitehurst's service as a Member of Congress, the use of excess campaign funds for this purpose is permissible under the Act. The Committee must report the disbursements.

**AO 1978-87: Use of Excess  
Campaign Funds**

Senator James B. Pearson may transfer \$100,000 in excess campaign funds to the University of Kansas Center for Research, Inc., for the purpose of establishing a fellowship program. The Act provides that it is lawful for excess campaign funds to be contributed to recognized charitable organizations.

**AO 1978-88: Public Service Announcements  
by Former Candidate**

State Senator Ronald R. Hein, a former candidate for the U.S. House of Representatives, may make public service announcements to raise money for diabetes research while his congressional campaign committee remains active in its effort to retire campaign debts. Any publicity resulting from these announcements will not constitute either a contribution or an expenditure on behalf of Mr. Hein's campaign since the announcements will make no reference to his candidacy for Congress and no appeal for campaign funds.

**AO 1978-92: Limitations and Reporting  
Requirements for Recount**

Funds collected and disbursements made by the Miller for Senate Committee (the Miller Committee) for the purpose of defraying expenses of a Federal election recount are not contributions or expenditures under the regulations. 11 CFR 100.4(b)(15). No gifts or payments may be given by or accepted from a national bank, corporation or labor organization. A separate segregated fund of such an organization may, however, make a donation or disbursement for a recount.

On the other hand, if a separate organization were established by the current officers or staff of the Miller Committee solely for the purpose of funding the recount effort, it would not become a "political committee" since its receipts and disbursements would not be contributions or expenditures under the Act. Thus, neither a Statement of Organization nor any reports would be required.

If the Miller for Senate Committee set up a bank account for recount purposes, the Committee would have to amend its Statement of Organization and report the receipts and disbursements, relating to the recount.

In either case, a political committee making a donation for the recount would be required to itemize the donation as a transfer. In addition, the committee should attach an explanation that the donation was exempt from the limitation because it was made for recount purposes only.

With regard to funds received for recount purposes, any surplus could not be used in a manner that would constitute a contribution or expenditure under the Act or regulations. Surplus funds could, however, be spent for other lawful purposes unrelated to Federal elections.

**AO 1978-93: Use of Excess  
Campaign Funds**

Senator Lloyd Bentsen may transfer unexpended campaign funds from his 1970 campaign to his reelection committee for use in the 1982 election. Commission regulations provide that a candidate may transfer funds from a previous campaign committee to a currently registered principal campaign committee, as long as none of the transfers consist of funds which would be in violation of the Act.

**With regard to this opinion and the following two opinions, the Commission has no jurisdiction over the application of tax laws and House or Senate Rules to the situation described.**

**AO 1978-94: Use of Excess  
Campaign Funds**

Excess campaign funds remaining from the principal campaign committee and three other authorized committees of the late Congressman Ralph H. Metcalfe may be used for several purposes consistent with State and Federal laws. The funds may be transferred to Federal, State or local election campaign committees of the Congressman's son, to a political ward organization, to the surviving members of the Congress-

man's immediate family, to employees of his Congressional and campaign committee staffs and to qualified charitable organizations.

For contribution purposes, the four campaign committees are considered a single committee. Thus, any transfers to political committees or candidates involved in Federal elections would be subject to one overall contribution limit. A contribution to Ralph Metcalfe, Jr., as a candidate for Federal office, for example, would be limited to \$1,000 per election. Transfers to a State campaign of Ralph Metcalfe, Jr. would not be limited, however, since contributions made to State and local elections are not subject to the monetary limits of the Act.

**AO 1978-95: Use of Excess  
Campaign Funds**

Congressman James J. Florio may use excess campaign funds to retire a debt remaining from his 1977 gubernatorial campaign provided there are no State or Federal laws prohibiting the transaction. The Act provides that candidates for Federal office may use excess campaign funds to support their activities as Federal officeholders, to contribute to a qualified charitable organization or to defray expenses for "any other lawful purpose." 2 U.S.C. §439a. The committee should report the transfer of funds on the report covering the period when the transfer is made.

**AO 1978-96: Honoraria**

When Congressman Clarence J. Brown accepts a speaking engagement, he may request that the sponsoring organization donate his honorarium to any of five charitable organizations he suggests in a letter. Under 2 U.S.C. §441i(b), if a sponsoring organization chooses to make a donation to any of the five or more charitable organizations suggested by Mr. Brown (instead of paying an honorarium to Mr. Brown), the payment will not count against Mr. Brown's honorarium limit.



# Appendix 6 Summary of Disclosure Files

89

	Total Filers Existing in 1978	Filers Terminated as of 12/31/78	Filers Waived as of 12/31/78	Continuing Filers as of 12/31/78	Number of Reports and Statements in 1978	Gross Receipts in 1978*	Gross Expenditures in 1978*
<b>Presidential</b>					499	\$1,387,555	\$1,623,674
Candidates	122	96	13	8			
Committees	177	111	0	66			
<b>Senate</b>					5,539	\$83,550,159	\$83,698,823
Candidates	562	246	254	62			
Committees and Office Accounts	655	292	0	363			
<b>House</b>					25,859	\$108,416,103	\$104,176,819
Candidates	2,878	981	1,678	219			
Committees and Office Accounts	3,175	1,438	0	1,737			
<b>Party</b>					6,500	\$117,453,809	\$124,285,138
National Level Committees	55	21	0	34			
State Level Committees	180	68		112			
Local Level Committees	554	257		297			
Convention Committees	8	5		3			
Delegates	6	4	0	2	0	50	7,595
<b>Nonparty</b>					27,427	\$54,387,415	\$61,737,926
Labor Committees	273	55	0	218			
Corporate Committees	833	49	0	784			
Membership, Trade & Other Committees	797	166	0	631			
<b>Communication Cost Filers</b>	87	N/A	0	N/A	65	\$5,903	\$217,545
<b>Independent Expenditures by Persons Other Than Political Committees</b>	69	26	0	43	214	\$86,824	\$116,016

\*Based on data taken from reports  
filed as of 12/31/78.

## Appendix 7

### Computer Indices Available

91

#### **A Index: Names and Addresses of Candidates**

Sorted by type of office sought (President, U.S. Senator, U.S. Representative), and alphabetically by last name or by State/Congressional district.

#### **B Index: Names and Addresses of Committees**

Includes name of connected organization, name of treasurer, committee ID number, notation if it is "qualified" as multicandidate committee, and filing frequency. This index can be sorted alphabetically by committee name, by committee ID number, and by type (Presidential, Senate, House, party, nonparty).

#### **C Index: Disclosure Documents Filed by Political Committees**

Includes, for each committee, its name, ID number, list of each document filed (name of report, period receipts, period expenditures, coverage dates, number of pages and microfilm location), total gross receipts and expenditures, and number of pages.

#### **D Index: Index of Candidates Supported by Committees**

Includes, for each committee, its name, ID number, name of connected organization, notation if it is "qualified" as multicandidate committee, and a listing of all Federal candidates supported, together with total aggregate contributions to or expenditures on behalf of each candidate (1972-78). In the case of party committees, coordinated party expenditures (§441a(d)) are listed in place of independent expenditures.

#### **E Index: Index of Candidates and Supporting Committees**

Includes for each candidate the following:

1. Candidate name, district/State, party affiliation and candidate ID number.
2. Listing of all documents filed by the candidate (type, coverage dates, period receipts, period expenditures, number of pages, microfilm location).

3. Listing of all documents filed by the principal campaign committee (See C Index for explanation).
4. Listing of all documents filed by other authorized committees of the candidate.
5. Listing of all committees (other than those authorized by the candidate) forwarding contributions to the candidate, the principal campaign committee, or an authorized committee, and the aggregate total of such contributions given to date. This listing also identifies committees making expenditures on behalf of the candidate or party committees making coordinated party expenditures (§441a(d)), including the aggregate total spent to date.
6. Listing of all persons or unauthorized single candidate committees filing reports indicating they made independent expenditures on behalf of the candidate.
7. Listing of all persons or committees filing unauthorized delegate reports.
8. Listing of all corporations or labor unions filing reports of communication costs on behalf of the candidate.

#### **G Index: Index of Itemized Transactions for Each Candidate and Political Committee\***

Itemized receipt and disbursement transactions are listed, along with the amounts of the transactions, keys to reports in which the transactions were indicated, and the microfilm location of transactions. Five categories were represented:

1. Individual transactions, including individual contributions and loan activity.
2. Selected loan and loan repayment transactions, including loans from banks.
3. Unregistered political organization transactions; that is, contributions to candidates from organizations which are not registered under the Act.

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\* Pursuant to restrictions in 2 U.S.C. §438(a)(4), the G Index with its names of contributors and addresses is available for public inspection exclusively at the Commission and may not be mailed out or copied.

4. Corporate refund/rebate transactions with itemized receipts showing refunds of deposits.
5. Transactions among registered candidates/committees which indicate transfers and loan activity.

**Y Index: Special Inquiry**

This immediate access system permits direct video display or printout of selected information in the Disclosure Information System. It consists of between 40 and 50 separate programs which may be used to locate, retrieve or display individual items or categories of information.

## Appendix 8

# FEC Publications and Clearinghouse Studies

93

### FEC Publications

*Federal Election Campaign Laws* (June 1976). This volume is a complete compilation of Federal election campaign laws. It consists of three sections: The text of the Federal Election Campaign Act, as codified in Titles 2 and 26 of the U.S. Code; the text of additional statutory provisions which are not under the Commission's jurisdiction but are relevant to persons involved in Federal elections; and a subject index of Title 2 relating to disclosure and contribution limits.

*Federal Election Commission Regulations* (April 1977). This volume is a complete compilation of the FEC Regulations prescribed on April 13, 1977. It includes two indexes: one covering general regulatory provisions related to contribution limits, registration, recordkeeping and reporting (Parts 100-115) and a second covering the public financing provisions (Parts 120-125, 130-134 and 140-146).

*FEC Record*. Published as a four- to eight-page binder insert, the newsletter serves as the primary means of informing candidates, political committees, parties and other persons interested in Federal elections about Commission activity. During 1978, twelve issues and an Annual Index for 1977 covered the following major topics:

- Reports Due
- Advisory Opinions
- Statistics
- Regulations
- Compliance Matters
- Litigation
- Legislation
- FEC Procedures and Staff
- Federal Register Notices
- Publications

An index to the 1978 *Record* (Volume 4) was published in February 1979.

*Campaign Guide Series*. Several color-coded pamphlets comprise the Federal Election Commission's *Campaign Guide* series, a reference tool prepared by the FEC to assist candidates

and political committees in complying with the Federal Election Campaign Act. Each Guide, prepared as a binder insert, has a distinct focus as described below:

1. *Campaign Guide for Congressional Candidates and Their Committees* (February 1978). This Guide, substituting for three Guides written in 1976, focuses exclusively on the concerns of Congressional candidates and their committees. It includes a thorough explanation of contributions and expenditures, as well as an examination of other sources of campaign support such as volunteer activity, independent expenditure activity and party activity. The Guide also contains a comprehensive explanation of registration, recordkeeping and reporting requirements.
2. *Campaign Guide for Political Committees* (September 1978). This Guide focuses on the requirements, under the Federal Election Campaign Act, of political committees which have not been authorized by any candidate for Federal office.

Consolidating material which appeared in three Campaign Guides published in 1976 and 1977, the Guide discusses the basic differences between contributions and expenditures and provides details on recordkeeping, registration and reporting requirements. In addition, the Guide describes the various ways a committee may support candidates and other committee activities such as fundraising and advertising.

3. *Campaign Guide for State and Subordinate Party Committees* (September 1976). This pamphlet explores the role that party committees play in financing Federal campaigns. Topics include: committee registration requirements, contributions to candidates, allocable and nonallocable expenditures for Congressional and Presidential campaigns, and a checklist of "do's and don'ts" for party committees.

*Annual Report 1977* (March 1978). The third *Annual Report* to the President and Congress provides a comprehensive review of the Commission's activities during 1977, including Congressional testimony on campaign financing bills, public financing certifications, legislative recommendations and new procedures. Statistical data is provided in the Appendices.

*The FEC and the Federal Campaign Finance Law* (October 1978). This 12-page pamphlet gives a brief overview of the major provisions of the Federal Election Campaign Act and the Commission's role in administering it. The brochure also summarizes the information and assistance available from the FEC and contains details on how to obtain additional information on other election-related topics.

*Bookkeeping and Reporting Manual*. This booklet presents a recommended method of bookkeeping to assist Federal candidates and political committees in maintaining records required by the Federal Election Campaign Act.

*The Reports on Financial Activity Series*. Based on data taken from reports filed by candidates and political committees, the *Reports on Financial Activity* series provides cumulative statistical studies of the 1978 election cycle beginning with January 1, 1977. The following cumulative statistical studies were issued during 1978:

*Interim Report No. 1: Party and Nonparty Political Committees, April 1978*

- Vol. I - Summary Tables
- Vol. II - State and Local Party Detailed Tables
- Vol. III - Nonparty Detailed Tables

*Interim Report No. 2: Party and Nonparty Political Committees, September 1978*

- Vol. I - Summary Tables
- Vol. II - State and Local Party Detailed Tables
- Vol. III - Nonparty Detailed Tables (corporate and labor)

Vol. IV - Nonparty Detailed Tables (no connected organization; trade, membership, health; cooperative, corporation without stock)

*Interim Report No. 3: U.S. Senate and House Campaigns, October 1978*

With the exception of the *Reports on Financial Activity* series, all publications listed above are available free from the Public Communications Office of the FEC. The *Reports on Financial Activity* are available from the Public Records Office.

## Clearinghouse Research Studies

### Continuing Reports

*Election Law Updates* are a quarterly series, cumulative through the calendar year, which summarize all election code changes in each of the 50 States. The series is designed to provide up-to-date election code information to State legislators, court officials and election administrators.

*Election Case Law* reports are a quarterly series, cumulative through the calendar year, which summarize election cases in the State and Federal courts. The reports provide updates of judicial developments pertinent to elections.

*Campaign Finance Law* is an annual report summarizing campaign finance laws in each of the States as well as at the Federal level. The report also provides a convenient chart summary of State and Federal requirements.

*Election Directory* is an annual report which summarizes the responsibilities of each State's chief election official, election board or commission. Names, addresses and telephone numbers of State election officials, offices and related legislators are also provided.

### Topical Reports

*Voting Systems* is a three-volume report on voting equipment currently on the market.

Volume I describes each device in detail and offers local officials step-by-step procedures for defining equipment needs and procuring equipment. Volume II summarizes representative State codes with regard to voting equipment acquisition. Volume III offers recommendations for drafting such legislation.

*Statewide Registration Systems 1 & 2* is a report on computerized statewide voter registration systems. Volume I examines problems involved in implementing a statewide system and offers suggestions for overcoming them. Volume II describes in detail the forms, procedures, outputs and variations on the basic Statewide computerized system.

*Contested Elections and Recounts* is a three-volume analysis of the laws and procedures governing contested elections and recounts for Federal offices. Volume I examines those issues and functions within the Federal government's purview, and makes recommendations for improving the handling of contested elections at the Federal level. Volume II examines State issues and options, and makes recommendations for improving the State handling of such cases. Volume III summarizes laws related to contested elections in each of the States and at the Federal level.

*Ballot Access* is a four-volume report on how candidates gain access to the ballot for Federal office in each of the States. Volume I identifies central administrative issues and problems and makes recommendations for improving the process. Volume II describes the administrative process in each State. Volume III details State legal memoranda and makes recommendations for improving the legal process. Volume IV briefly summarizes ballot access requirements for Federal office in each State.

*Mail Registration Systems 1* discusses problems involved in implementing a mail registration system. In addition to a general description of how mail registration systems operate, the

report offers practical suggestions for overcoming difficulties.

*Bilingual Election Services* is a three-volume report on providing election services in languages other than English. Volume I summarizes such services since 1975. Volume II is a manual for local election officials. It offers practical advice on ways to: identify the language problems in a jurisdiction, provide bilingual registration services and provide bilingual balloting services. Volume III provides a glossary of common election terms in English along with their Spanish and dialectical equivalents.

*Election Administration* is a four-volume set introducing program planning, management and financial control concepts into local election administration. Volume I provides an overview of election functions and tasks, and introduces the notion of a management cycle. Volume II focuses on planning, provides detailed task/activity checklists and flow diagrams, and demonstrates how tasks can be assigned. Volume III introduces a chart of accounts and demonstrates how budgets can be prepared and costs monitored by applying the chart to each election function. Volume IV is a set of legal memoranda summarizing State code processes with regard to administrative and budgeting responsibilities.

#### **Studies Currently Underway**

*Training Election Officials* examines the problems and methods involved in training poll workers, deputy registrars and chief local election officials for election day. A "how-to" volume will assist State and local officials in designing effective training programs.

*Election System Statistics* seeks a common set of performance measures that local election officials can use to evaluate their election systems. Manuals will identify relevant data collection and analysis methods. These statistics can then be used to improve effectiveness and efficiency of election services.

*Registration File Maintenance and Verification* focuses on improving the accuracy of voter registration lists around the country. Product manuals will offer concrete guidance in adding to, deleting, changing and purging file entries. Emphasis will be placed on verifying these steps by both manual and automated file systems.

# Appendix 9

## FEC Library: Summary of Collection

97

The FEC library is part of the Office of General Counsel and, although primarily used by the legal staff, serves all divisions of the Federal Election Commission. Located on the fourth floor, the library is also open to the public on weekdays between 9:00 a.m. and 5:00 p.m. The collection includes basic legal research tools with an emphasis on materials dealing with political campaign financing, corporate and labor political activity, and election and campaign reform.

### Functions of the Library

The library serves as the central reference and research center for the Commission. It is part of a nationwide interlibrary loan system designed to quickly provide staff members with items not readily available within the Commission. As a selective depository, the library also receives selected Government documents and other items from the Government Printing Office on a regular basis, including the *Federal Register*, *Congressional Record*, *Code of Federal Regulations*, and U.S. Supreme Court Slip Opinions.

### Resources of the Library

Outlined below is a brief explanation and description of each resource area contained in the FEC library.

#### General Reference Section

This section contains reference tools frequently used by all divisions of the Commission including topical encyclopedias, dictionaries, Government and Congressional directories, atlases, manuals, almanacs and a current set of the *Martindale-Hubbell Law Directory*.

#### Federal Election Commission Document Center

This section includes administrative material generated by the Commission as well as legislative material bearing on the establishment and operation of the Commission and the Regulations governing Federal election campaigns. Materials include bound legislative histories of

the Federal Election Campaign Act of 1971 and all subsequent amendments; transcripts of FEC hearings on Regulations; Advisory Opinions and Advisory Opinion Requests; Opinions of Counsel; *Federal Register* Notices; FEC Meeting Minutes; *FEC Record*; *FEC Campaign Guide* Series; Task Force Reports; Audit Reports; and Disclosure Reports.

#### Case Material File

For cases directly involving the Federal Election Commission in litigation, the case material file contains available briefs and records and copies of judicial decisions rendered. In addition, the case material file contains briefs and slip opinions for relevant court cases.

#### Journal Article File

A journal article file contains photocopies of pertinent law review articles and Library of Congress Congressional Research Service reports devoted to discussions of the Federal Election Commission, election reform, campaign finance, Congressional ethics, administrative law and procedure, corporations and politics, labor and politics, the Privacy Act, the Freedom of Information Act and the Sunshine Act. Materials dealing specifically with election administration and State election legislation are located in the Clearinghouse Document Center. (See Chapter on Clearinghouse.)

#### Periodical and Journal Collection

The library maintains subscriptions of periodicals which are considered helpful to the work of the Commission including, *Campaign Practices Reports*, *Access Reports*, *Congressional Quarterly Weekly Reports*, *National Journal Reports*, the *Wall Street Journal* and the *Harvard Law Review*.

#### Looseleaf Service

The two most important looseleaf services housed in the library are *United States Law Week*, published by the Bureau of National Affairs (BNA), which includes coverage of recent Supreme Court decisions and lower court decisions; and the *Federal Election Campaign*



*Finance Guide*, published by Commerce Clearing House (CCH). Other services housed in the library include: *Standard Federal Tax Reporter* (CCH); *Congressional Index* (CCH); *Fair Employment Practice Service* (BNA); and *Corporation Law Guide* (CCH).

and an FEC Regulation index for more recent opinions. The index is cumulative for the calendar year and is updated quarterly.

### **Book Collection**

The book collection contains election-related monographs and legal treatises with an emphasis on Federal civil procedure and administrative law, as well as legal research sets such as *American Jurisprudence 2d*, and *American Law Reports 2d* and *3d*.

### **Code Section**

This section contains major code materials required by the legal staff, including the *United States Code*; *United States Code Annotated*; *United States Code Service*; *United States Code Congressional and Administrative News*; *Code of Federal Regulations*; and *Daily Federal Register*.

### **Reporter Section**

The collection of law reporters includes the *U.S. Supreme Court Reports* (Official and West editions); *Federal Reporter 2d*; *Modern Federal Practice Digest*; *Federal Practice Digest 2d*; *Supreme Court Digest* (Lawyers edition); *Federal Rules Decisions*; and the slip opinions of the U.S. Court of Appeals for the D.C. Circuit.

### **Card Catalog**

Primary access to the library collection is through the card catalog. It indexes the book collection and the journal article file by author, title and subject.

### **Advisory Opinion Index**

The library publishes and updates the *Index to FEC Advisory Opinions* to aid library users in their research of Commission opinions. The index is composed of a subject index to all Advisory Opinions and Opinions of Counsel which have been issued since the Commission's establishment in 1975. The Advisory Opinion Index also includes a U.S. Code Section index

# Appendix 10

## FEC Federal Register

### Notices, 1978

99

Notice	Title	Federal Register Publication Date	Citation
1978-1	FEC Announces Publication of Comprehensive Index of Multicandidate Political Committees	1/19/78	43 FR 2758
	G.A.O. Regulatory Reports Review	1/25/78	43 FR 3438
	Department of Justice Memorandum of Understanding	2/8/78	43 FR 5441
1978-2	Federal Advisory Committee (Clearinghouse) Announcement on Annual Comprehensive Review	3/7/78	43 FR 9350
	G.A.O. Regulatory Reports Review	3/15/78	43 FR 10734
1978-3	General Campaign Activities: Proposed Regulations	4/7/78	43 FR 14673
1978-4	Vacating Past Commission Policy Pronouncements	4/19/78	43 FR 16547
1978-5	FEC Requests Comments on Proposed Revision of Presidential Campaign Fund Regulations	5/31/78	43 FR 23587
	Joint FCC/FEC Notice on Sponsorship Identification and Candidate Authorization Notices	7/13/78	43 FR 30126
1978-6	FEC Rules of Procedure	7/21/78	43 FR 31433
1978-7	Proposed Notice of New Systems of Records	7/26/78	43 FR 32328
	Federal Aviation Administration Changes Regulations to Resolve Conflict with Federal Election Campaign Act	9/26/78	43 FR 44480
1978-8	FEC Announces Publication of Cumulative Index to Advisory Opinions and Opinions of Counsel: April 1975 – August 1978	10/31/78	43 FR 50736

# Appendix 11

## Status of Audits \*

101

Types of Committees Audited	Audits Required by Audit Policy**	Field Work Completed	Internal Review of Audit in Progress	Audits Com- pleted and Released to Public	Audits to be Scheduled
Presidential Candidate Committees - Public Financing (1976)	19	19	5	14	0
Presidential Candidate Committees - No Public Financing (1976)	8	8	5	3	0
Congressional Candidate Committees - Random (1976)	106	106	23	83	0
State Party Committees	71	67	50	17	4
Nonparty, Multicandidate Committees	53	11	6	5	42
Congressional Party Committees	9	9	1	8	0
National Party Committees	16	0	0	0	16
Referral Audits (other than committees covered by the policy)	N/A	4	5	1	3***

\* Figures reflect status of all FEC audits as of January 10, 1979.

\*\* Commission's audit policy was adopted in November 1976 and revised in April 1978.

\*\*\* These are in addition to referral audits in progress or completed.